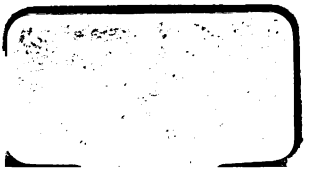

ELECTION PETITIONS.

REPORTS

OF THE

DECISIONS OF THE JUDGES

FOR THE TRIAL OF

ELECTION PETITIONS

IN ENGLAND AND IRELAND,

PURSUANT TO

THE PARLIAMENTARY ELECTIONS ACT, 1868.

BY

EDWARD LOUGHLIN O'MALLEY, Esq.,

AND

HENRY HARDCASTLE, Esq.,

BARRISTERS AT-LAW.

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ERRATA.

Page 9, last line, *for* "17 & 18 Vict. c. 102, ss. 43 and 45," *read* "Parliamentary Elections Act, 1868, ss. 43 and 45."

Page 66, marginal note, *for* "s. 13," *read* "s. 2 (1)."

Page 67, line 14 from top, *for* "17 & 18 Vict. c. 102, s. 1," *read* "17 & 18 Vict. c. 102, s. 2 (1)."

Page 118, line 15 from top, *for* "Parliamentary Elections Act, 1865," *read* "Parliamentary Elections Act, 1868."

Page 109, marginal note, *for* "21 & 22 Vict. c. 89," *read* "21 & 22 Vict. c. 87."

Page 129, in note *, *for* "section 2," *read* "section 11."

Page 172, line 13 from bottom, *for* "Wolferstan & Dew," *read* "1 P. R. & D. 161."

Page 160, line 1 from bottom, *for* "5 & 6 Will. 4," *read* "4 & 5 Will. 4."

CASE I.

BOROUGH OF WINDSOR.

BEFORE MR. JUSTICE WILLES, JANUARY 12, 1869.

Petitioner: Colonel Richardson-Gardner.

Respondent: Mr. Roger Eykyn.

Counsel for Petitioner: Mr. O'Malley, Q.C., and Mr. Murphy.

Agent: Mr. Long, Windsor.

Counsel for Respondent: Mr. Henry James, and Mr. C. Coleridge.

Agents: Mr. Darvill and Mr. Wyatt.

The petition contained the usual allegations of bribery, &c., and prayed the seat upon a scrutiny.

Mr. *O'Malley* opened the Petitioner's case. He pointed out the view of the law with respect to agency which he understood to prevail. He called attention to 17 & 18 Vict. c. 102, s. 2 (1), which provides that "every person who shall directly or indirectly, by himself or by any other person in his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or endeavour to procure, any money or valuable consideration to or for any voter to induce any voter to vote or refrain from voting," should be liable to a certain punishment; and to 17 & 18 Vict. c. 102, s. 36, which says, "If any candidate at an election for any county, city, or borough, shall be declared by an Election Com-

Bribery by agent, 17 & 18 Vict. c. 102, s. 2 (1), 36.

mittee guilty, by himself or his agents, of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city, or borough during the Parliament then in existence." The construction which had been put upon those words by Election Committees was, that if either the candidate or his agents had been, directly or indirectly, guilty of bribery, the election was void; and there was not a single instance in which an election had been held to be valid where bribery had been proved to have been committed by the agents of a candidate. He was about to quote cases in support of this view, when

Mr. Justice WILLES said:—Counsel need not refer to cases in support of his view, because the section of the Act of Parliament was quite distinct upon the point.

Mr. *O'Malley* then called attention to cases of bribery which it was proposed to prove on the part of the Petitioner.

Evidence was then given for the Petitioner.

The following points were raised in the course of the Petitioner's case:—

Bribery. Colourable charity. (1) 3.

It was proved that the Respondent had given one pound for a voter who had previously promised him his vote, and had afterwards applied to him for assistance in distress occasioned by the death of two children.

Mr. Justice WILLES said the giving of the sovereign was a question of degree. If a sovereign were sent to every person on the register on the occasion of a birth or a death in his family by a candidate at an election, it would be hard to come to any other conclusion than that the money was given with the view of obtaining votes. It was a very different question, whether an isolated gift of the kind in a case of great distress was to be looked upon in the same light.

Card messenger no authority to canvass.

Evidence was given of an attempt by William Bishop to bribe one Hall, a voter, by offering him a five-pound note. It was proved that Bishop had come to Windsor on the nomination day in consequence of a letter he had received from Nicholls, one of the

Respondent's agents; that he met Nicholls on the night before the polling, and he told him he was to act next day as a card messenger from the Clewer booth to the committee rooms. Nicholls asked him if he knew Hall, and expressed a wish that he should ascertain from him for whom he was going to vote. He did not enter the committee room where he took the cards from the polling booth, but gave them in the ante-room. He had received no instructions from Nicholls to give or offer money to any voter.

Mr. *Henry James*, for the Respondent, was about to comment on Hall's case, when

Mr. Justice WILLES said:—"I do not think that Bishop, who was merely a card messenger, can be said to have been an agent;" I have stated that authority to canvass—and I purposely used the word 'authority' and not 'employment,' because I meant the observation to apply to persons authorised to canvass, whether paid or not for their services—would, in my opinion, constitute an agent, and that authority for the general management of an election would involve authority to canvass. I do not say that there may not be instances of agency on behalf of a candidate besides those of authority to canvass and authority for the general management of an election. As an illustration of a sort of case with which I might have to deal, I may mention that of an agent for election expenses. I do not think a mere messenger, such as Bishop was, can be regarded as an agent."

Treating. Odd Fellows' Society benevolent not political.

It was proved that the Odd Fellows' Society consisted for the most part of artizans. The annual dinner was held at the Crown Tavern on the 25th of August, the Respondent being in the chair, and 95 members present. The usual course on such occasions was that those present should each pay his own score. The chairman, however, occasionally paid for the wine which was supplied. On this occasion four or five dozen of champagne were drunk. The wine was placed on table by the landlord at the Respondent's request. Each guest had paid half-a-crown for his dinner. Twenty-seven pounds ten shillings were set down to the account of the Respondent, Mr. Jones, the vice-chairman, and Mr. Mason, for champagne, sherry, and cigars. A considerable number of persons present at the dinner were voters for Windsor, of all shades of political opinion.

Mr. Justice WILLES subsequently in his judgment said:—The Odd Fellows is not a political society. Its constitution is of a benevolent character, and party politics are as a rule excluded from it, as from other societies of a similar description. The sting of this case lies in the fact that the dinner was held on the 28th of August, within a fortnight or three weeks of the commencement of the actual canvass for the elections. Now I am impressed with the objectionable character, to say the least of it, of any transaction by which an intending candidate may seek to ingratiate himself with electors, whether of his own side in politics or not, by profuse expenditure for luxuries. I must express the opinion, for I entertain it, that this is a questionable proceeding, and that it would be well if such proceedings were refrained from in future. I am at the same time quite aware of the distinction between treating and bribing. The terms of the section of the Acts of Parliament applicable to treating are very different from those applicable to bribing. I must bear that steadily in mind in dealing with cases of this description. There is, as we know, an express enactment with respect to treating which forbids the giving of any refreshment to voters during an election under a penalty, which seems to imply that all hospitality is not struck at by the enactments as to treating. If every man at the Odd Fellows' dinner got six shillings and eightpence, or the price of the champagne which he drank, what would a Parliamentary Committee say to such a proceeding, and what must I say of it if there were not a distinction between bribing and treating? This case, however, is not, I think, altogether without precedent. Cases of a similar nature have, I find, been under the consideration of Parliamentary Committees, who have drawn a distinction between societies which have, and those which have not, a political object. I may refer to the decision in the Pontefract case, *Woolferston and Dew, page* 71, as bearing upon this point. The treating of Odd Fellows mentioned in that case was to a much smaller extent than in the present instance, but it was held not to amount to treating within this Act, the society not being a political society. I may also refer to the Maidstone case, *Woolferston and Dew, page* 104, as bearing immediately upon this point, as showing that it appears to have been taken for granted, and no doubt cor-

rectly, that a similar treating of a society having a political character, if established in evidence, would have amounted to an offence within the Act of Parliament. I am not bound by the decisions of Parliamentary Committees; but I may properly refer to those decisions for my guidance. As to the case of the Odd Fellows, then, while I cannot, for the reasons I have mentioned, disabuse my mind of its importance, yet I think it well to follow the course which has been adopted by Parliamentary Committees in similar instances.

Refusal to produce document. (1) 29.

John Smith having proved that he had got a Mr. Wicks to write to the Respondent, and the letter being called for by the petitioner's counsel,

Mr. Justice WILLES:—The Respondent must say whether he will produce it or not; because unless he produces it now, he cannot produce it afterwards for the purpose of explanation.

31 & 32 Vict. c. 125, s. 32. (1) 63.

Mr. Wicks was not called by the Petitioner as to this letter (although the Respondent asked that he might be). And upon Smith being cross-examined as to Wicks,

Mr. Justice WILLES said that if neither side called Wicks he should consider it his duty to order Wicks to come and be examined by the Court, as he thought that this was a case where the section of the Act authorising the Judge to examine a witness would apply.

Question of seat and scrutiny to a certain extent one, so that evidence admissible if applicable to either issue. (3) 141. 151.

Upon a witness being called to prove agency by something that the alleged agent said to him after the election, it was objected on the part of the Respondent that although it might be evidence on a scrutiny, it was not evidence against the Respondent on the question of the election being void.

Mr. Justice WILLES said that to a certain extent the question of the seat and the question as to scrutiny were to be considered as one and the same, and that on that ground he should not reject the evidence, because it might, in the event of a scrutiny, become material; but that the distinction was quite clear to him between striking off a vote because the voter was proved by his own statement to be guilty of corrupt practices, and fixing a person for whom the alleged agent was said to be acting.

(2) 35.

Upon a witness saying that a voter had made statements to him with reference to his vote,

Mr. Justice WILLES said that the witness might clearly be asked what those statements were, because they might be evidence on the issue as to whether that voter's vote should be struck off on the scrutiny; which was quite a different question from that as to whether bribery was made out against the Respondent.

Election petition inquiry quasi-criminal. (2) 369.

Upon an unstamped promissory note being put in as evidence,

Mr. Justice WILLES said that the present inquiry must be taken to be quasi-criminal, and, therefore, that the Act which makes stamps unnecessary in criminal proceedings would apply.

Use of influence not necessarily corrupt. (3) 172.

Upon it being proved that a Mr. Mason's tenants, who were in arrear of rent, had all voted the way Mr. Mason wished them, on the understanding (as it was submitted) that they should not be pressed for their rent,

Mr. Justice WILLES said that the question of whether a man gave a free vote was something like the question whether a man made a free will, and that the mere fact of a person having influence and intentionally retaining it, is not alone evidence of unduly exercising that influence.

Mr. *H. James* opened the Respondent's case, and was about to call witnesses, when

Mr. *O'Malley* stated that Colonel Gardner had come to the conclusion that the case which had been made out against the Respondent was not at all the sort of case which he had anticipated that he should have been able to prove, and that he felt that he should not be justified in pressing his case any further.

Mr. *H. James*, having considered the Respondent's position, said that he proposed to call the Respondent, Mr. James Herbert, and Mr. Bedborough.

Mr. Justice WILLES inquired whether it was proposed to proceed with the recriminatory charge against Colonel Gardner, and

Mr. *James* having expressed a doubt as to the course which he should pursue on this point,

Inquiry judicial not inquisitorial.

Mr. Justice WILLES said:—I do not consider it my duty to attempt that which would properly devolve upon a Commission of Inquiry, if such a Commission should issue in compliance with a petition which has, I understand, been presented to the House of

Commons. I consider my duties to be judicial, and not inquisitorial, except in so far as it would be proper that I should follow up any clue which the evidence laid before me by the parties on the one side or the other may furnish. I do not think it was the intention of the Act of Parliament to convert a judge into a magistrate to institute a preliminary inquiry. I am the more satisfied of that because of the express provision with reference to the issuing of commissions of an entirely different character from that under which I now sit, in the event of its becoming necessary to inquire into the existence of corrupt practices generally. It is only where a clue to the existence of such corrupt practices is presented by the evidence properly and formally laid before me that I shall think it necessary, as at present advised, to send for parties and papers with a view to investigate a subject which I consider to be out of my jurisdiction.

The Respondent, Mr. *Herbert*, and Mr. *Bedborough* having been examined, and having contradicted evidence which had been adduced in support of the Petitioner's case, the recriminatory charge against Colonel Gardner was abandoned.

Mr. Justice WILLES then delivered judgment, declaring that the Respondent was duly elected.

Mr. Justice WILLES said:—With reference to the question of costs, I am convinced that the intention of the Legislature was to put this question on the same footing as in ordinary actions, and that, as a general rule, the costs ought to be paid by the unsuccessful party. I am of opinion that although the petition is neither frivolous nor vexatious, yet as it has failed, and as there are no special circumstances to displace the general rule, I must order the Petitioner to pay the costs of the Respondent. Costs.

CASE II.

BOROUGH OF NORWICH.

BEFORE MR. BARON MARTIN, JANUARY 15, 1869.

Petitioner: Jacob Henry Tillett.

Respondent: Sir Henry Josias Stracey, Bart.

Counsel for Petitioner: Serjeant Ballantine; Mr. D. D. Keane, Q.C.; Mr. Sims Reeve.

Agents: Messrs. Ashurst and Morris; Mr. Abel Tillett.

Counsel for Respondent: Mr. Rodwell, Q.C.; Serjeant Sleigh; Mr. E. L. O'Malley; Mr. Cooper Wyld.

Agents: Mr. Thomas Knox Holmes; Mr. Skipper; Mr. Collins.

The petition contained the usual allegations of bribery, &c., and claimed the seat upon a scrutiny.

Serjeant *Ballantine* opened the Petitioner's case.

Evidence was then given for the Petitioner, in the course of which it was proved that a large number of voters were bribed by one Hardiment, whose agency was clearly proved.

The following decisions were given upon points raised in the course of the Petitioner's case:—

Subpœna. Order to attend. 6.

Upon proof by a witness, John Abbott, that Thomas Worledge was keeping out of the way to avoid being served with a subpœna, Serjeant Ballantine applied to the Court for an order for the attendance of his wife, Mrs. Worledge, who had not been subpœnaed.

Mr. Baron MARTIN said that he did not think he had any power to grant such an order, before they had been served with a subpœna, and that they might have a subpœna issued from the Court.

Upon another witness, Mrs. Hardiment (who had been subpœnaed as a witness) being called and not answering,

Mr. Baron MARTIN said:—"I will make an order for her to come; if witnesses will not come, I will immediately make an order for them to come."

Wording of petition. Allegation as to agency. 37.

It having been proved that one Hardiment had bribed voters to vote for the Respondent, and evidence having been given by which his agency was proved (as Mr. Baron Martin said) up to the hilt,

Mr. *Rodwell* called the attention of the Court to the wording of the petition. He said that throughout the allegations, as well as throughout the prayer, not one single word was said about bribery by agency. In the third allegation the petition merely said that Respondent, "by himself and other persons on his behalf," did so and so. He maintained that there was a distinction between a person who committed the act on the part of the principal as an agent, and a person who did so merely in his behalf. He said that the Judges had laid down that, before a person could be made responsible for the acts of another person who had been acting in his behalf, it must be shown that the act had been done with the privity, knowledge, and consent of the party for whom it was done; in other words, it must have been done at the special request or instance of the principal. He must have been the person who had furnished the money, and who had given special orders for the act to be done, before he could be made liable for the act of the other person. He referred to several cases;[1] and contended that there was a recognised distinction between the acts of "an agent" and the acts of "a person who did a thing on behalf of another."

Mr. Baron MARTIN said he would not study the wording of the petition, but its substance.

Mr. *Rodwell* then cited 17 & 18 Vict. c. 102, ss. 43 & 45, to show

[1] Hughes *v.* Marshall, 2 C. & J. 118; Felton *v.* Easthope, "Rogers on Elections," p. 328.

that the Legislature drew a very clear distinction between acts done "with the knowledge and consent of" a candidate, and acts done by an agent; he said that the petition should be taken as an indictment against the Respondent, and that looking upon it as such, it contained no count by which the Respondent could be put upon his trial for acts done by his agents.

Mr. Baron MARTIN said:—I am very clearly of opinion that, under the third clause of this petition, it is competent for the Petitioner to go into any act of bribery by the Respondent himself, and further, to go into acts of bribery by any person for whom, in law, the Respondent is responsible, whether he be an agent directly appointed by the Respondent, or whether he be a person who, by reason of the construction that has been put on these Acts of Parliament—a construction which to some extent is binding—was acting on his behalf. The allegation in the third clause, "other persons in his behalf," means every person for whose act or conduct he is responsible. Under the Act of Parliament it is expressed "every person who shall directly himself, or by any other person in his behalf," and it is perfectly clear that the meaning which is given to "any other person in his behalf" is every person other than the candidate for whose act he is responsible. You have cited two cases with which I was familiar, and I apprehend those cases were well decided. If I were sitting here trying an indictment or trying an action for penalty, before the candidate could be made responsible for another, for a crime or penalty, you would have to give evidence of direct bribery: but I am not trying a criminal case, I am trying a civil case, and the rules applicable to a civil case are the rules applicable, I apprehend, to this. The law of agency which would vitiate an election is utterly different from that which would subject a candidate to a penalty, or an indictment, and the question of his right to sit in Parliament has to be settled upon an entirely different principle. Mr. Justice Blackburn, Mr. Justice Willes, and myself unanimously came to the conclusion that any person authorised to canvass was an agent, and it does not signify whether he has been forbidden to bribe or not. If the candidate had told him honestly, "Do not bribe; I will not be responsible for it;" if bribery was committed, that bribery would affect him. Such is

the opinion of Mr. Justice Willes, Mr. Justice Blackburn, and myself. The relation is more on the principle of master and servant than of principal and agent. It has been arrived at after full consideration, and it is a conclusion by which I am prepared to abide. A master is responsible for an act of negligence on the part of his servant, notwithstanding what directions he may have given him; for instance, if he is driving a carriage, and carelessly driving against another, does an injury; and if the Respondent had told Mr. Hardiment, who is now proved up to the hilt to be an agent, not to commit any illegal act, if he did so the Respondent is responsible for it. It is utterly immaterial whether the Respondent had forbidden him to bribe if he committed bribery, the effect of which would be to destroy his *status* as a candidate, render him by law incapable of election, and make every vote given to him void.

Mr. *Rodwell*, Q.C., opened the Respondent's case:—

Witnesses were then called for the Respondent. Evidence was given to rebut that by which Hardiment's agency had been proved, and the Respondent was called to deny any knowledge or participation in the bribery.

Witnesses were also called to prove the recriminatory charge against the Petitioner, but they failed to establish a case, and thereupon

Serjeant *Ballantine* said on behalf of the Petitioner that it was not his intention to press his claim to the seat on a scrutiny.

Mr. Baron MARTIN then delivered judgment, declaring that the Respondent was unseated on the ground of bribery by agents, but absolving him from any personal knowledge of it.

Mr. *Keane*, Q.C., applied to the Court to decide the question of costs. Costs.

Baron MARTIN said,—Costs will follow the events.

Mr. *Rodwell*, Q.C.:—There is one very serious part of this matter in which the Petitioner has failed and we have succeeded, and I submit that we ought to have costs with regard to this.

Baron MARTIN:—The costs to which the Petitioner is entitled are those which have been incurred by him in respect of showing his own freedom from bribery of every kind, and showing that there was bribery for which the Respondent was responsible.

Mr. *Rodwell* then objected to the Respondent paying the whole costs, on the ground that there were two issues, one upon the 43rd section of the Act of 1868, charging the Respondent with personal bribery, and one upon the 46th section, for bribery by agents, and that the Petitioner having failed upon the first of these issues, the Respondent was entitled to these costs.

Mr. Baron MARTIN said that he was of opinion that there was only one issue, but that before deciding the question of costs he would consult the other Judges.

Note.—Eventually the question of costs was decided as follows:—

That the costs incidental to the petition so far as they relate to the determination and proof that the Respondent was not duly elected, and so far as they relate to the recrimination against the Petitioner under 31 & 32 Vict. c. 125, s. 53, be paid by the Respondent to the Petitioner, and the costs of the Respondent in meeting the claim that the Petitioner was duly elected and ought to have been returned be paid by the Petitioner to the Respondent.

CASE III.

BOROUGH OF GUILDFORD.

BEFORE MR. JUSTICE WILLES, JANUARY 19, 1869.

Petitioners: Elkins and others.

Respondent: Mr. Guildford Onslow.

Counsel for Petitioners: Mr. Overend, Q.C., Mr. J. C. Mathew.

Agent: Mr. H. E. Brown.

Counsel for Respondent: Serjeant Sargood, Hon. E. Ashley.

Agent: Mr. W. H. Wyatt.

The petition contained the usual allegations of bribery, &c., but did not pray the seat.

Evidence was given to prove corrupt treating and undue influence, but failed. In support of the charge of bribery it was proved that two non-resident voters had their travelling expenses sent to them as an inducement to come up and vote, but the agency of the sender was not established.

In the course of the case:—

A witness, Cawson, proved that he had received a letter from one Handford, promising to pay his (Cawson's) travelling expenses. He had subsequently returned the letter to Handford, at his request.

Agency need not be established before evidence of corrupt practices is gone into. (2) 163.

Mr. Justice WILLES said before the letter was called for, Handford must be put into the box.

Handford having proved that he had lost or destroyed that letter,

Mr. *Overend*, for the Petitioners, proposed to give secondary evidence of its contents.

Serjeant *Sargood*, for the Respondent, objected to this, on the ground that it had not been proved that Handford was the Respondent's agent, or that he had anything to do with him.

(2) 175. Mr. Justice Willes :—The objection is, in effect, that no proof of Handford's agency has yet been given, but the act[1] removes that objection, for it says that proof of corrupt practices may be given before proof of agency, unless the judge in his discretion should change the order, or, rather, should direct counsel to change the order of proceeding. But how can I properly exercise that discretion against the Petitioners' case at present? It would be a prejudgment. If agency were not proved this would fall to the ground; there is no question of scrutiny under the present petition, but if agency be proved there will arise a question somewhat analogous to that in the Slade[2] case, whether the *corpus delicti* is made out, and if so whether it is at the expense of the agent, in which case the election would be void; or whether it is also made out against the Respondent, in which case the penal consequences which are introduced by the new act would inevitably follow.

(2) 177. I do not at present see that I have any discretion in the matter, because the Petitioners have opened a case of agency; if they succeed in proving it, this will then become important.

Mr. Justice WILLES in his judgment declared the Respondent duly elected.

Voter disqualified from non-residence, 6 & 7 Vict. c. 18, s. 79, may be bribed.

Referring to a case in which the Petitioners had proved an attempt to bribe two men whose names were on the register, but who had become disqualified from voting by reason of non-residence, he said, with reference to their disqualification, "These men were in the employment of the Ordnance Survey, and were on the register prior to the election. Being so, they had the power to vote, but before the election occurred they ceased to reside at Guildford, not temporarily but permanently, and had no residence but that in Chester at the time of the election. They had, therefore, no right to vote. It is clearly so laid down in the Act[3];" and with reference to the bribery of disqualified voters,

[1] 31 & 32 Vict., c. 125, s. 17.
[2] Cooper *v.* Slade, 6 E. & B. 25 L. J. Q. B. 324.
[3] 6 & 7 Vict., c. 18, s. 79.

"It struck me at first that the law respecting bribery applied only to persons entitled to vote, but that is not so; the law applies also to a person who may be *primâ facie* entitled to vote; it is said expressly in 17 & 18 Vict., c. 102, s. 38, that the word voter shall mean any person who has or claims to have a right to vote in the election of a member."

Speaking as to what might be the effect of general bribery, he said:—

General corruption.

"It is unnecessary to go into any inquiry here as to general bribery. We have no evidence whatever of the prevalence of general bribery at the election. But do not be mistaken and suppose that because these inquiries turn upon individual cases, and upon whether these cases are traced to the member or his agents, that general corruption quite apart from acts of the members or their agents would not have the effect of vitiating an election. It clearly would, because it would show that there was no pure or free choice in the matter, that what occurred was a sham, and not a reality. This, however, is out of question here. There may also be bribery so large in amount as in itself to furnish evidence, not indeed of general bribery, but of bribery coming from a fund with which it is impossible, as a matter of common sense not to conclude that the member or at least an agent of his was acquainted. In that case the proper result would be the vitiation of the election, because the bribery was of such an extent as must have come to the knowledge of the member or his agent."

Costs.

As to costs he said:—"Inasmuch as the petition was founded upon strong *primâ facie* grounds, and attended with reasonable and probable cause for pursuing the inquiry to a termination, I cannot visit the Petitioners with costs; each party must bear and pay their own costs."

CASE IV.

BOROUGH OF BEWDLEY.

BEFORE MR. JUSTICE BLACKBURN, JANUARY 19, 1869.

Petitioners: Mr. Charles Sturge, and Mr. George Baldwin.

Respondent: Sir Richard Glass.

Counsel for the Petitioners: Mr. Fitzjames Stephen, Q.C., Hon. E. Chandos Leigh, Mr. Lewis Sturge.

Agents: Messrs. Chilton, Burton, Yeates, and Hart, and Mr. William Morgan.

Counsel for the Respondent: Mr. Hardinge Giffard, Q.C., Mr. Poland.

Agents: Messrs. Lawrence, Plews, and Boyer.

The petition contained the usual allegations of bribery, &c., and prayed the seat on behalf of the other candidate, Mr. Thomas Lloyd.

It was proved that a large number of public-houses were habitually open during the election; that whoever went in there got drink as he wished, and that all this drink was ordered and controlled by a clerk of the Respondent's agent.

Evidence was also given as to the employment of watchers, but it was not shown that they were so employed for the purpose of influencing their votes.

In the course of the case :—

Examination of witness not down in the particulars to be postponed. 2.

Upon one Fort being called as a witness for the Petitioners, and being asked questions, with a view of showing that he had been bribed, it was objected that his name was not included in the particulars.

Mr. Justice BLACKBURN observed that, as particulars had been

furnished, to commence with a case in which no notice had been given, might take the other side by surprise, and that it would be fair and right that the case should stand over till later in the inquiry.

Previous statement of witness not evidence in chief. 7.

Thomas Wood, who had previously made a statement to the Petitioner's agent, which statement was at the time taken down in writing, said, in answer to a question put to him about the matter by the Petitioner's counsel, that he did not remember the substance of the statement.

Mr. Justice BLACKBURN said that he would allow a leading question to be put upon the subject, but that the rule was that a previous statement of a witness differing from what he stated on his oath in Court, might be proved to shake his evidence, but could not be used as evidence in chief.

Evidence of treating. 29.

John Goodwin, having stated that the Respondent, himself, and several other persons were together in a public-house, and that in the presence of the Respondent one of those persons asked the witness if he would have anything to drink, it was objected that this was no evidence that this treating was by the authority of the Respondent; but

Mr. Justice BLACKBURN ruled that anything done in the Respondent's presence which would tend to show that he was aware that liquor was given gratis was relevant (the weight to be attached to it being greater or less, according to circumstances), as tending to show that in the words of the Act he was accessory to treating.

Mr. Justice BLACKBURN in his judgment declared the election void on the ground of corrupt treating.

What constitutes evidence of agency. Effect of large powers of agency.

As to the question of agency, he said:—"No one can lay down a precise rule as to what would constitute evidence of being an agent. Every instance in which it is shown that, either with the knowledge of the member or candidate himself, or to the knowledge of his agents who had employment from him, a person acts at all in furthering the election for him, in trying to get votes for him, is evidence tending to show that the person so acting was authorised to act as his agent. It is by no means essential that it should be shown that a person so employed, in

order to be an agent for that purpose, is paid in the slightest degree, or is in the nature of being a paid person. But it is a question what is sufficient evidence upon that point. I should apprehend that when there is evidence given, as in this case, that when the candidate is going about canvassing, a gentleman goes previously and requests voters, is some such way as this—'Will you meet Sir Richard Glass in such and such a place?' and then when he comes to that place says, 'Here is Sir Richard Glass come to ask for your vote;' or says to the person what would certainly be implied or understood, 'Here is Sir Richard, for whom I wish you to vote,'—all that is evidence to show that the person was an agent. And I take it that the question for the Court sitting to try the case comes ultimately to be, whether upon the aggregate of all these things taken together, of which each in itself is little, but is certainly some evidence, the person is shown to have been employed to such an extent as to make him an agent, for whom the candidate would be responsible. I take it that in each case the Judge must bring common sense to bear upon it, and satisfy himself whether it is sufficient or not. I do not think that such a question as that would turn upon minute particulars as to what particular words were used, or what particular thing was done, but upon the common-sense broad view of it."

He then said that in the present case he felt no difficulty, because it was proved that the Respondent deposited as much as 11,000*l.* in the hands of one Pardoe, directing him in his letters to apply that money honestly, but not exercising either personally, or by any one else, any control over the manner in which that money was spent, and not, in fact, knowing how it was spent. "Upon that," he said, "I can come to no other conclusion than that the Respondent made Pardoe his agent for the election to almost the fullest extent to which agency can be given. A person proved to be an agent to this extent is not only himself an agent of the candidate, but also makes those agents whom he employs. The extent to which a person is an agent differs according to what he is shown to have done. An agent employed so extensively as is shown here, makes the candidate responsible, not only for his own acts, but also for the acts of those whom he, the agent, did so

employ, even though they are persons whom the candidate might not know or be brought in personal contact with. The analogy which I put in the course of the case is a strong one, I mean that of the liability of the Sheriff for the under-Sheriff, when he is not merely responsible for the acts which he himself has done, but also for the acts of those whom the under-Sheriff employs, and not only responsible for the acts done by virtue of the mandate, but also for the acts done under colour of the mandate, matters which have been carried very far indeed in relation to the Sheriff."

Applying the principle thus laid down to the case of one Burmish, a clerk to Pardoe, he said :—

"Every person employed in the election by Pardoe is an agent of the Respondent. Burmish was so employed, and if he had ordered drink and treating without authority from any body, and had paid for it out of his own pocket, that of itself would have been sufficient to avoid the election."

Proof of corrupt treating. Intention.

Upon the general question of treating, he said, after citing 17 & 18 Vict. c. 102, s. 4 :—"Looking at those words, it is plain that those who prepared the Act have endeavoured to take in almost everything that could possibly be taken in, but they have very properly and wisely governed it all by the word 'corruptly.' As to this word 'corruptly,' the true construction of the Act is that which was stated by Mr. Justice Willes in giving his opinion in the House of Lords in the case *Cooper* v. *Slade*, namely, that 'corruptly' there does not mean wickedly, or immorally, or dishonestly, or anything of that sort, but with the object and intention of doing that which the Legislature plainly means to forbid. In fact, giving meat or drink is treating, when the person who gives it has an intention of treating—not otherwise; and in all cases where there is any evidence to show that meat or drink has been given, it is a question of fact for the Judge whether the intention is made out by the evidence, which in every individual case must stand upon its own grounds; and although each individual case may be a mere feather's weight by itself, and so small that one would not act upon it, yet if there is a large number of such cases, a large number of slight cases will together make a strong one; and consequently it must always be a very important inquiry what was the scale, the amount and the extent to which it was done.

In considering what is corrupt treating and what is not, we must look broadly to the common sense of the thing. There is an old legal maxim, '*Inter apices juris summa injuria.*' To go by the strict letter of the law often would produce very grave wrong. If we were to say that an election was void upon a single case of that sort, we should be going to the '*apices juris,*' and the result would be '*summa injuria.*' Therefore the inquiry must be as to the extent and amount of such cases."

Speaking with reference to the return of the election expenses, he said:—

Insufficient return by agent of expenses is evidence of knowledge on his part of corrupt practices.

"When you look at the mode in which these election expenses were returned by the Respondent's agent, carefully avoiding returning any considerable items that had been actually paid before, sums which you cannot possibly suppose were omitted by accident, such as 120*l.* or 90*l.*, and also the not complying with the provisions of 26 Vict. c. 29, s. 4, by returning what were the expenses incurred, whether paid or not, it is impossible to avoid coming to the conclusion that all this was done simply to baffle the Act of Parliament, to render it a nullity, and to prevent it being known how the money was spent. All that is evidence that the Respondent's agent knew perfectly well that the money was bestowed for purposes that would not bear the light of day. I must, therefore, find the Respondent's agent personally guilty of corrupt treating."

Employment of watchers a corrupt practice.

As to the employment of watchers, he said:—"It comes within all the mischief of treating. In the first place, it indirectly influences the men, whether voters or not; if they are not voters it indirectly influences all their friends and other voters. In the second place, when it is given to voters, it would in all human probability lead to an expenditure by them in public-houses and elsewhere, which would indirectly influence voters. In that way it falls within all the mischief of treating, but no statute has yet been passed rendering it of the same effect as treating." He subsequently said that he considered this to be a corrupt practice, and that as such he must report it to the Speaker.*

* His report as to this was as follows:—"That it was proved that a practice extensively prevailed on both sides of employing and paying a large number of persons as what was called 'watchers,' who rendered no service of any value in return. That this practice appears to have been kept up at Bewdley because it

In dealing with the evidence affecting the personal guilt of the Respondent, he said:—

What is evidence of respondent being personally guilty of corrupt practices.

"In paying money to a person not declared to be his election agent, the Respondent was in the most direct terms acting contrary to 26 Vict. c. 29, s. 4. Besides I cannot in the slightest degree doubt that if a fund is placed in the hands of an agent by a candidate, and if it is shown that the agent expended it in corrupt practices afterwards, it is evidence tending to show that the candidate paying into those hands the money that was spent in corrupt practices was himself intending that it should be spent in corrupt practices. Then it seems to be a question to what extent it was shown, if the money was bestowed for corrupt practices, that the candidate who gave the money was aware of it, and in that case, also, the extent to which it was shown that there were corrupt practices, would be very material. I think if it were shown that there had been here, as in many other boroughs in former times, and it may be now, extensive bribery, a large number of people bribed, corrupt clubs paid money, and so forth, it would be a very serious question whether the candidate, in putting money into the hands of his agents, was not personally cognisant of it. But it does not come to any such question here."

Costs.

As to costs, he said that "as the Petitioners had succeeded in showing that the election had been avoided by the acts of persons for whom the Respondent was responsible, the *primâ facie* general rule that the successful party has his costs must prevail. If it appeared that there was anything particularly annoying or vexatious, I would deduct that from the costs."

Mr. *Giffard*, for the Respondent, submitted that the costs of preparation for the scrutiny ought not to fall upon the Respondent.

Mr. Justice BLACKBURN, said that inasmuch as it might be fairly presumed that if the Petitioners had proceeded with the scrutiny they would not have been successful, his decision was that the Petitioners' costs should be borne by the Respondent, except those incurred solely and exclusively for the scrutiny.

was formerly the practice at old elections, and is very objectionable for the same reasons as those which have induced the Legislature to prohibit treating."

CASE V.

BOROUGH OF LICHFIELD.

BEFORE MR. JUSTICE WILLES, JANUARY 28, 1869.

Petitioner: Major Anson.

Respondent: Colonel Dyott.

Counsel for Petitioner: Mr. Powell, Q.C., Mr. Macnamara.

Agent: Mr. Birch.

Counsel for Respondent: Mr. Dowdeswell, Q.C., Mr. Young.

Agents: Mr. W. Greene, and Mr. Dyott.

THE petition contained the usual allegations of bribery, &c., and prayed the seat.

The evidence related for the most part to cases of individual bribery by offer of employments and promises of situations, and in one case by a promise of an order for admission to a hospital. No attempt was made to show anything like an organised system of corruption.

Married woman not to be cross-examined as to any conversation with her husband. (2) 19.

In the course of the case :—

A witness was asked in cross-examination:—

Q. Do you not know that your husband promised the Respondent to vote for him ?—*A.* I do not know.

Q. Have you not heard from your husband that he did promise it ?

Mr. Justice WILLES :—You cannot ask a woman as to a conversation with her husband.

Upon a witness giving evidence as to a case of bribery, of a statement made in the presence of one Hinkley, whose agency had not been previously proved,

Evidence admissible of statements made in the presence of one who may be afterwards proved agent. (2) 69.

Mr. *Dowdeswell* said a question arose whether evidence of statements not made in the presence of the parties themselves was admissible.

Mr. Justice WILLES said:—If it should appear afterwards that Hinkley was not the Respondent's agent, this evidence would then come to nothing; but if, on the other hand, Hinkley was proved to be the Respondent's agent, the statements referred to in the evidence ceased to be behind the back of the Respondent, because they were made in the face of his agent. He could not at present exclude statements made relevant to the question of bribery; he presumed the agency of Hinkley was going to be proved.

Evidence having been given that a voter (Rogers) had been bribed by one Hinkley, but neither he nor his wife having been called as witnesses,

Onus of calling person alleged to have been bribed is on petitioners. (2) 76.

Mr. Justice WILLES said:—Are you not going to call Rogers or his wife?

Mr. *Powell*:—No.

Mr. Justice WILLES:—Whether they admit it or deny it, it seems to me they ought to be called.

Mr. *Powell*:—Rogers having voted for the Respondent, we thought we would not call him.

Mr. Justice WILLES:—I do not think that is a reason for not calling him at all. It may be right that the onus should be upon the Respondents of calling Hinkley, but I do not see how you can throw upon them the burden of calling the voter and his wife, who are the very persons upon whose evidence the question arises. If neither of you call those persons, I shall have to call them.

Mr. *Powell*:—I have not the least objection to call them for the information of the Court.

They were then called.

It having been proved that one Wilson, after being canvassed by an agent of the Respondent on the morning of the polling day, and after refusing to promise his vote, was told by the agent to go

Effect of one case of treating standing alone. (2) 192.

and get something to drink; eventually he voted for the Petitioner; whereupon

Mr. Justice WILLES took occasion to intimate that there might be cases, which, if they stood alone, would come under section 23 of 17 & 18 Vict. c. 102, and would not be enough to upset an election, but that if there were many of them they would be sufficient to do so under section 4.

Discrediting own witness. (3) 91.

A witness (Barlow) was called to prove that Respondent had promised him a place in a hospital if he would vote for him; Barlow would not admit this, and upon that a witness (Walmsley) was called to prove that Barlow had before admitted it to him.

Q. State what Barlow said respecting the Respondent.—*A.* I asked Barlow why he was going to vote for the other party (meaning the Respondent)? He said they had promised him a place in the hospital.

Q. Have you had any conversation with him since then about that statement?—*A.* I asked him on the morning of the election whether he had made up his mind which way he was going to vote. He said he did not know yet.

Mr. Justice WILLES:—I think I ought to interpose. All you can ask this witness is in the very words that you put to Barlow. Ask him whether Barlow did say that to him. That ought to conclude his examination.

Mr. *Macnamara* (to witness):—Did Barlow say to you or did he not say to you that the Respondent had promised to get him a place in the hospital?—*A.* Yes.

Presence of Respondent at public-house not conclusive evidence of treating, unless amount consumed is extraordinary. (3) 354.

In support of the charge of treating it was proved that a considerable amount of drinking had been going on at a public-house while the Respondent was there addressing a meeting.

Mr. *Powell,* for the Petitioner, asked whether the Court thought that he should call the landlord of the public-house in question?

Mr. Justice WILLES intimated that it was his impression that a case of treating was not proved by merely showing that a candidate went to a public-house to address a meeting where drinking was going on, unless it was proved that the drinking was more

than might be expected to take place at a house where people met together. It did not appear to him that that would be sufficient to bring his mind to the conclusion that necessarily the candidate paid for the drink that was there supplied. A case of treating was not made out unless it was shown that an extraordinary amount of drink was consumed which could not have been paid for by the persons there. As to calling the landlord, he must leave that to counsel's own discretion.

Agent to canvass. (4) 21.

It being admitted by the Respondent that one Coxon went round with him and canvassed the electors,

Mr. Justice WILLES said:—I think it may be taken that those who have hitherto had the decision of election cases have held that an agent to canvass would be an agent within the statute.

Committee-men. (4) 23.

It having been stated on behalf of the Respondent that he employed no committee, but that there were persons who acted in drawing up cards, and so forth,

Mr. Justice WILLES said:—That is the modern fashion apparently; but persons who do what committee-men formerly did, and are seen taking an active part, are just as much committee-men as if they were called so.

Mr. Justice WILLES in his judgment declared the Respondent duly elected.

Undue influence defined. 17 & 18 Vict. c. 102, s. 5.

He said, in the course of it, as to undue influence:—"The proper definition of that undue influence, which was dealt with in 17 & 18 Vict. c. 102, s. 5, is using any violence or threatening any damage, or resorting to any fraudulent contrivance to restrain the liberty of a voter so as either to compel or frighten him into voting or abstaining from voting otherwise than he freely wills."

When treating avoids an election. 17 & 18 Vict. c. 102, s. 36.

As to treating, he said:—"It may be doubted whether treating, in the sense of ingratiation by mere hospitality, even to the extent of profusion, was struck at by the common law. It is, however, certain that it is now forbidden, under penalties, by the 17th & 18th Vict. c. 102, whenever it is resorted to for the purpose of pampering people's appetites, and thereby inducing electors either to vote or to abstain from voting otherwise than they would have

done if their palates had not been tickled by eating and drinking supplied by the candidates; and it is certain that by the 36th section of that Act, any candidate who by himself or his agents resorted to treating as a means of being elected, not only spends his money at the time, but does so with a certainty that if he be detected, or if any of his agents even without his knowledge or authority should have treated electors, the seat gained under such circumstances is forfeited, even although the majority might not be composed of persons so treated."

How treating proved.

As to the proof of treating, he said:—"In order to prove treating it must be shown, not merely that eating and drinking went on during the election, and went on under the eyes of the candidate (eating and drinking must always go on), but it must be shown that the eating and drinking was supplied at the expense or upon the credit of the candidate, either by his authority or by the authority of one or more of his agents in order to influence voters."

General bribery.

As to bribery, he said:—"With respect to bribery, the law is perfectly clear. Bribery at common law, equally as by Act of Parliament, avoided any election at which it occurred. If there were general bribery, no matter from what fund or by what person, and although the sitting member and his agents had nothing to do with it, it would defeat an election, on the ground that it was not a proceeding pure and free, as an election ought to be, but that it was corrupted and vitiated by an influence which, coming from no matter what quarter, had defeated it and shown it to be abortive."

Bribery by agents.

At Common Law by 17 & 18 Vict. c. 102, s. 36, and by Parliamentary Elections Act, 1868, s. 43.

As to bribery by agents, he said:—"If it were shown that the agent of the member bribed even without the authority, and contrary to the express orders, of the member, his seat was forfeited—not by way of punishment to the member, but in order to avoid the danger that would exist if persons subordinate to the candidate during an election were led away, by their desire to benefit their superior, into illegal acts, the precise extent of which it was difficult to prove, but a single one of which, if proved, it was the policy of the law to hold, would have the effect of avoiding the proceeding. That a Member was thus answerable for his agent at common law—his agent in the sense of conducting the election,

not merely in the sense of being authorised to bribe—is perfectly clear. It was so laid down as clear by Lord Tenterden, before the Act of the 17th & 18th Vict. c. 102, s. 36. That section where it speaks of agents must be construed by the light of the common law, and must be read as including agents authorised in the conduct of the election or to canvass, and not merely agents authorised to bribe. If there could be any doubt that such was the law, that doubt is set at rest by the 43rd and following sections of the Parliamentary Elections Act, 1868, by the former of which, the 43rd, bribery committed with the knowledge and consent of a Member subjected him for seven years to the disability of being returned to Parliament, of voting at an election, or of holding any judicial office. That 43rd section leaves the case of bribery by agents to be dealt with by those which follow, and the result is clear. I have been thus elaborate in stating the result of the law on the subject, in consequence of doubts which have been thrown out of late as to whether a single act of bribery proved either against a Member or against his agent engaged in the conduct of an election will have the effect of defeating the election."

Corrupt promise.

Measure of evidence necessary.

All influence not necessarily corrupt.

Passing on to specific instances of alleged bribery, he said, as to the case of one Barlow, whom the Petitioners alleged to have been bribed by a promise of a place in a hospital,—"Barlow was an old man in years and failing, and was very desirous of getting into St. John's hospital. Barlow knew that the Respondent's agent, Greene, had some interest at the hospital. In the conversation in which Barlow was canvassed by Greene, he expressed a desire to be taken into the hospital; Greene gave him an answer which rather put him off than promised him. Barlow knew well beforehand that Greene had an interest at the hospital, and Greene knew well beforehand that Barlow would like to be taken into the hospital. That being so, the conversation amounted to nothing more than putting into words what each knew before, and did not amount to a promise that he should be taken into the hospital if he voted, as he afterwards did, for the Respondent. To prove a corrupt promise, as good evidence is required of that promise illegally made, as would be required if the promise were a legal one, to sustain an action by Barlow against the Respondent

upon Barlow voting for him, for not procuring or trying to procure him a place in the hospital.

"The law cannot strike at the existence of influence. The law can no more take away from a man who has property or who can give employment the insensible but powerful influence he has over those whom, if he has a heart, he can benefit by the proper use of his wealth, than the law could take away his honesty, his good feeling, his courage, his good looks, or any other qualities which give a man influence over his fellows. It is the abuse of influence with which alone the law can deal. Influence cannot be said to be abused because it exists and operates. It is only abused in cases of this kind where an inducement is held out by a promise in the terms of 17 & 18 Vict. c. 102, s. 2, a promise to induce voters to vote or not to vote at an election."

As to the case of Baxter he said:—

Insensible influence not necessarily corrupt.

Corrupt use of such influence must be clearly proved.

"Baxter had been in the employment of Symonds an agent of the Respondent; he left the employment in 1867, in consequence of some dispute which had arisen between the master and the man; but Baxter was anxious to get back into Symonds' employment, and an insensible influence existed in consequence of this upon the mind of Baxter at the time when Baxter voted for the Respondent. Baxter was taken back into Symonds' employment very soon after the election, and it was proved that Symonds would not or probably might not have taken Baxter back unless he had so voted. That does not prejudice the decision of the question. But it was not proved that Symonds made any express promise to Baxter to do so; it was left to inference amounting to suspicion only, and upon such inference and suspicion I must decline to act for the purpose of defeating the election."

Payment of travelling expenses, 21 & 22 Vict. c. 87, s. 1.

Representation of the People Act, 1867, s. 36.

As to the case of one White, a case in which it was alleged that bribery had been committed on behalf of the Respondent by a gift of travelling expenses, he said:—It was proved that one White, a voter who had ceased to reside in the borough, received 9*s.* 6*d.* in postage stamps for travelling expenses in a letter anonymous, but containing the slip "Vote for Dyott." White eventually did not vote for the Respondent but for the other candidate. In deciding whether the money was sent with the intention of influencing the mind of the voter, it was impossible to exclude

the fact that White did not vote for the Respondent but for the other candidate, for as a matter of result if the case was to be judged of by the result, White was not influenced. That, however, he said, would not prevent a bribe from being a bribe, since a man who votes for one candidate after having received money for promising to vote for the other is guilty of bribery equally as if he voted according to his promise, even if at the time he promised he had no intention of fulfilling it. Neither is the bribe the less complete because the voter was one who never ought to have voted, because he had ceased to be resident, and had by the 6 Vict. c. 18, s. 79, ceased to have a right to vote at the election. The law upon the subject of payment of expenses to electors is to be found in the case of *Cooper* v. *Slade*, 6 *House of Lords Cases*, 746, and in the 21 & 22 Vict. c. 87, s. 1, an Act which was passed soon after the decision in that case which says, "It shall not be lawful to pay any money or give any valuable consideration to a voter for or in respect of his travelling expenses." The remaining enactment on the subject is the Representation of the People Act, 1867, s. 36, by which leaving the question of giving a lift to the poll to a person in the borough untouched, it is made unlawful to pay either to the voter or to any person for whom conveyances are hired any money on account of conveyances to the poll.

Costs.

At the conclusion of the case, and before judgment was given, Mr. Justice WILLES asked whether either side proposed to apply for costs in the event of a decision in his favour.

Mr. *Powell*, for the Petitioner, said:—I will make a fair arrangement with my learned friend if he likes. If he will not, I will not.

Mr. *Dowdeswell*, for the Respondent, said:—I leave it entirely in your Lordship's hands.

Mr. Justice WILLES:—I understand that neither party intends to apply for costs in any event.

Eventually each party paid their own costs.

CASE VI.

BOROUGH OF BRADFORD.

BEFORE MR. BARON MARTIN, JANUARY 26, 1869.

Petitioners: John Haley, Charles Hastings, Angus Holden, Titus Salt, jun.

Respondent: Henry William Ripley.

Counsel for Petitioners: Mr. Giffard, Q.C., Mr. Metcalfe, Mr. Mellor.

Agents: Mr. Charles Mills, Mr. James Hargreaves.

Counsel for Respondents: Mr. Overend, Q.C., Mr. Price, Q.C., Mr. Littler.

Agent: Mr. David Little.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

The following special report was made as to the facts in this case.

"It was proved that the said Henry William Ripley had opened an unlimited credit at his bankers in favour of his agent, who availed himself of it to the extent of upwards of 7,200*l.*, and who sent to the returning officer a mere abstract of totals of outlay unaccompanied by vouchers; and that this was knowingly done, contrary to the statute 26 & 27 Vict. c. 29, s. 4. That in one ward of the said borough, inhabited principally by Irishmen of the working class, large numbers were influenced by corrupt practices, committed by the agents of the said Henry William Ripley, and that upwards of one hundred public-houses and beer-houses were opened as committee-rooms or pretended committee-rooms, in the interest of the said Henry William Ripley, where drink without payment was supplied to voters, which was afterwards paid for by the agents of the said Henry William Ripley."

In the course of the case :—

A witness examined for the Petitioners proved treating at one of the Respondent's public-houses.

Any account sent in to Respondent may be called for. *Primâ facie* evidence against him, whether disputed or not. 37.

Mr. *Giffard* called for the bill sent in to the Respondent.

Mr. *Overend*, for the Respondent, objected to producing it. The Petitioners had no right to call for those bills which the Respondents held to be unfounded claims which he had resisted and upon which he denied his liability. The mere fact that a claim had been sent in and received by post or messenger by Respondent's agent did not make it binding against the Respondent.

Mr. Baron MARTIN said :—The Petitioners might call for any document in the possession of the Respondents ; upon the document being produced, it became evidence in the cause as a document coming from the Respondent's possession and produced by him. The Respondent might give any explanation of it afterwards. It might be strong evidence or it might be worthless, but *primâ facie* it was evidence.

Witness not to be cross-examined until pronounced adverse by the judge. 39.

A witness, Michael Moran, examined for the Petitioners, was asked as to the numbers of a committee which he had assisted in forming, and answered vaguely.

Q. Just remember how many the committee consisted of ?—*A*. Sometimes more, sometimes less.

Q. What was the maximum number ?—*A*. Perhaps twenty.

Q. Did you tell a Mr. Miles that it was thirty-five or forty ?

Mr. *Overend*, for the Respondent, objected. This was not evidence. He was not a hostile witness.

Mr. Baron MARTIN :—If the Petitioners call a witness, they must call him and deal with him as at Nisi Prius.

Mr. *Giffard* said :—In order to lay a foundation for asking to be allowed to treat witness in a different manner to ordinary evidence in the cause, he tendered the evidence for his Lordship to consider whether the witness was hostile.

Mr. Baron MARTIN said the question must not be asked. When he saw the witness was hostile he would deal with him accordingly. At present he saw nothing adverse in him.

A witness, Michael Coyne, examined for the Petitioners, proved

Parties to Petition. Notice to produce documents in their possession. 19.

that at the request of one Kitcheman he had signed a document which Kitcheman had then taken away. He was about to state the substance of it when

Mr. *Giffard* called for the document, and said that notice to produce had been given.

Mr. Baron MARTIN said the parties were the four Petitioners and the Respondent, and there was notice to produce, which would affect any document in the possession of the Respondent, but not any document in the possession of Kitcheman, even if Kitcheman was proved to be an agent.

Paid canvasser, and one paid to use influence. Distinction. 17 & 18 Vict. c. 102, s. 2.

It having been proved that a number of persons who were known to have influence with the Irish voters—of whom there were many in the borough—were paid on behalf of the Respondent to use their influence with these voters to restrain them from voting against the Respondent,

Mr. *Price*, for the Respondent, contended that what was done was not distinguishable from paid canvassing—a thing which the statute clearly did not mean to forbid.

Mr. Baron MARTIN said:—There were a number of voters whose support it was deemed desirous to obtain, and money was given to a few persons to exercise their influence on those persons to induce them to refrain from voting. That seemed to him to come within the very words of the statute. It was quite different from canvassing, from paying a person for his labour, and for using such persuasions as were lawful when inducing a voter to vote.

Statement of expenses contravening. 26 Vict. c. 29, s. 4. *Primâ facie* case against Respondent.

It was proved that Respondent's agent had sent in to the returning officer what purported to be a detailed statement of Respondent's expenses, but that it consisted merely of heads of expenses, amounting in all to £7211 16*s.* 7*d.*, amongst which were the following items:—

Committee rooms and expenses . . .	£1997	18	3
Messengers, clerks, and canvassers . .	1973	11	2
Miscellaneous expenses	225	5	1

The whole on one sheet of paper, and without a single voucher accompanying it. It was also proved that the agent had done this, knowing at the time that he was acting contrary to 26 Vict. c. 29, s. 4.

Mr. Baron MARTIN said, as to this, in his judgment:—"My impression is, that if counsel for the Petitioners had rested their case simply upon this, and had put in this account, and had proved that no bills or vouchers had been delivered to the returning officer, I should have called upon the Respondent to prove the legality of every payment contained in this account from the beginning to the end of it. My impression is, that that alone would have made a *primâ facie* case against any person, especially when I call attention to the amounts contained in that paper."

Mr. Baron MARTIN, in his judgment, declared the Respondent unseated on the ground of corrupt treating.

Treating, when corrupt. 17 & 18 Vict. c. 102, s. 4.

Commenting on the evidence of treating, he said:—"I mean to give my judgment on what has been clearly established before me, viz., that the Respondent was by his agents guilty of treating within the meaning of 17 & 18 Vict. c. 102, s. 4. The material evidence is as short as possible. It is proved that there were open in this town, by persons for whom it is admitted Respondent was responsible, 158 public-houses, and that in 115 of these public-houses refreshments were supplied. Counsel for Respondent stated that these refreshments were supplied to people who had done work, but the evidence is directly to the contrary. The evidence is that persons were admitted to these committee-rooms; that the farce was gone through of putting down their names as committee-men; and that refreshments were supplied to them, whether they were voters or non-voters or messengers. It was proved by the Respondent's own witnesses that directions were given that at these public-houses refreshments were to be afforded to the persons who came there, and that they were afforded both to voters and non-voters and to any person admitted to the room, with the caution that they should not be excessive, but reasonable. That is the evidence on the part of the Respondent. The statute enacts, 'That every candidate at an election who shall corruptly give, or be accessory

to giving, or shall pay any expenses incurred in eating, drinking, entertainment, or provision, in order to be elected, shall be deemed guilty of the offence of treating;' and it has been as clearly contravened by the Respondent as it possibly could be."

Costs. Costs follow the event.

CASE VII.

BOROUGH OF BRADFORD.

BEFORE MR. BARON MARTIN, JANUARY 29, 1869.

Petitioners: Samuel Storey, Thomas Garnett.

Respondent: William Edward Forster.

Counsel for Petitioners: Mr. Price, Q.C., Mr. Waddy.

Agent: Mr. Mumford.

Counsel for Respondent: Mr. Serjeant Ballantine, Mr. Serjeant Sargood, Mr. S. Pope.

Agent: Mr. John Henry Wade.

THE petition contained the usual allegations of bribery, treating, &c., but did not pray the seat.

It appeared that a considerable number of public-houses were made use of by committees acting for the Respondent, and that on the day of the election refreshment-tickets were issued to the members of these committees; but it was shown that the tickets were, as far as possible, distributed only among those who were *bonâ fide* carrying on the work of the election, and that in point of amount the expenditure thus incurred by the Respondent was not unreasonable.

Some attempt was made to prove bribery by gifts of money, but the evidence on this point was stated by the Judge to be beneath contempt.

In the course of the case,

It having been proved, in support of the charge of treating, that

Treating "corruptly." 17 & 18 Vict. c. 102, s. 4.

refreshments were provided by the Respondent at a number of public-houses for committee-men and others who were engaged in carrying on the work of the election,

Serjeant *Ballantine*, for the Respondents, admitted that refreshments had been supplied on the part of the Respondent at sixty-two public-houses; and he said that the act of so providing them was intentional, but he denied that it was done corruptly to influence voters. He contended that as long as refreshments were not provided for the purpose of influencing a vote, there was no law to forbid their being provided. The word "corruptly," which governed the section (17 & 18 Vict. c. 102, s. 4) relating to this matter, meant more than merely "wilfully," otherwise it would not be introduced, as the section would be perfect without it. But supposing "corruptly" meant merely "wilfully," then the meaning of "wilful" must be governed by the words "influencing a voter."

Mr. *Price*, for the Petitioners, contended that the meaning of "corruptly" was merely "wilfully," or "deliberately," simply doing the thing forbidden by the statute, even if in good faith, and he quoted the case of *Cooper* v. *Slade* in support of his view.

Mr. Baron MARTIN said, as to this, in his judgment, "the 2nd section of 17 & 18 Vict. c. 102, deals with bribery, and bribery is, as ordinarily understood, the giving of money. The enactment is, 'every person who shall give any money to a voter to induce the voter to vote is declared to commit an offence.' There is nothing there said about 'corruptly.' It is simply the giving of money to induce a voter to vote that is declared to be an offence. The law fixes upon the act of giving money to a man to vote; every man must know that it is an unlawful and wrong thing to give it; and every man who receives it must know, at least if he be a man in a certain condition of life, that he is doing a dishonest act in being bribed. There the Act stops, and there is nothing about 'corruptly' in it. It does not apply to the mind of the man who offers, or of him who takes; it turns upon the fact of giving money to a man to vote. That this is the meaning of the Act is shown beyond all doubt by the next two lines, which say, 'or shall corruptly do any such act on account of such voter having voted.' The section draws a distinction between them, and it says that if

you give money to a man to vote before an election, that is *ipso facto* bribing; but if the money is given after a man has voted, you must show that it was done corruptly. What is the exact meaning of the word 'corruptly?' I am satisfied that it means a thing done with an evil mind and intention, and unless there be an evil mind or an evil intention accompanying the act, it is not 'corruptly' done. 'Corruptly' means an act done by a man knowing that he is doing what is wrong, and doing it with an evil object. I have called attention to the 2nd section of this Act, in order to explain what is the true meaning of the word 'corruptly.' The words upon which I have here to put a construction are those of the fourth section, 'Every candidate who shall "corruptly," by himself, or by any person, give or be accessory to the giving, or shall pay wholly or in part, any expense incurred for meat or drink, in order to be elected or for being elected, shall be deemed guilty of treating.' That which is provided against is, that the candidate shall not 'corruptly' give any meat or drink 'in order to be elected;' and I think the meaning must be given to the word 'corruptly,' which I have indicated, viz., a thing done with an evil mind; there must be some evil motive in it, and it must be done in order to be elected."

A witness, Timothy Allen, whose name was not down in the particulars of treating given under a Judge's order, was asked a question which appeared to be intended to prove that he had been treated; whereupon

Object of rule 7. 158.

Sergeant *Ballantine*, for the Respondent, objected, on the ground that his name was not in the list of persons treated.

Mr. Baron MARTIN, after reading out the seventh rule said, that this rule was confined to a Petitioner claiming the seat; that at the time when the rules were made, it was thought that inasmuch as there was this particular rule as to the case of a candidate claiming the seat, it was but reasonable to apply it to other cases which were not strictly within the rule. That is how the thing arose at first. It was thought that particulars might be given, almost as a matter of course, to a very considerable extent. It was then suggested that some limitation had better be made

upon it, for that it would give an opportunity of tampering with the persons whose names were mentioned in the particulars, and getting them out of the way, and that it might do more harm than good; the consequence was that there was a limitation put upon it, and we all agreed that we would wait and see what was the operation of the rule in the first five cases that we each had set down for hearing, and see whether it would work well or not.

Mr. Baron MARTIN further said, with regard to the Judge's order made in this particular case, that if there was any restriction in the order, of course the Petitioners must be bound by it, but that if not, they were quite free, and that it was his own wish to make the thing as free as possible.

Order for particulars; effect of in limiting evidence.

161. A witness, Sarah Halliday, examined for the Petitioners, being about to give evidence of treating, which had taken place at the Spinkwell Inn,

Serjeant *Ballantine*, for the Respondent, objected that the name of this house was not mentioned in the Petitioners' particulars given pursuant to the Judge's order, which was as follows:—

"I do order that the Petitioner shall, three days before the day appointed for trial, leave with the Master, and also give the Respondent or his agent particulars in writing, of all persons alleged to have been bribed, of all persons alleged to have been treated, of all persons alleged to have been unduly influenced, and that no evidence shall be given by the Petitioners of any objection not specified in such particulars, except by leave of a Judge, upon such terms, if any, as to amendment, postponement, and payment of costs as may be ordered. And I further order that the Petitioners shall, within four days from this day, leave with the Master, and give the Master particulars in writing of the nature of the corrupt or illegal practices charged."

Mr. Baron MARTIN said that the giving of the names of the houses was not necessary under the order.

Mr. Baron MARTIN in his judgment declared the Respondent duly elected.

Treating. After stating that he was not satisfied, from the evidence, that

bribery or treating or undue influence previous to the polling-day had been proved against the Respondent, he said the next question he had to consider was, whether what was done on the polling-day was treating within the meaning of 17 & 18 Vict. c. 102, s. 4. He said:—"What was done on the polling-day was this: a number of persons who were supporters of the Respondent had formed themselves into committees to carry his election. In one word, there were about 1400 persons who voted for Ripley, 1300 for Respondent, and 1200 for Miall, and there were sixty refreshments provided and supplied by means of tickets. The Respondent's agent stated that he and Mr. Little, who was engaged on the other side, went to the town clerk and agreed that he should provide refreshments for the check clerks in the polling-booths, and that they would afterwards repay the expenses so incurred. It is agreed that this was a necessary and innocent act. According to the evidence it was doing precisely the same thing in the Respondent's committee-rooms as was agreed to be done at the polling-booths by both parties, that refreshments should be given to the men who required them, to enable them to carry on the work of the election. Those refreshments were given to nobody else, and care was taken to give them to no persons except those who were actually engaged in labour. I am of opinion that that does not fall within 17 & 18 Vict. c. 102, s. 4. That which is provided against is, that a candidate shall not 'corruptly' give any meat or drink in order to be elected; and I think that to put a proper construction upon the Act, the meaning which I have indicated must be given to the word 'corruptly,' viz., a thing done with an evil mind. There must be some evil motive in it, and it must be done 'in order to be elected.' But those are negatived. It was not given 'in order to be elected,' because it was known how all these men would vote. They were there because they were voters who had declared their intention to support the Respondent. It is therefore idle to suppose that the meat and drink were given to induce them to vote. I think therefore that there is an absence of anything to satisfy me that it was done 'corruptly,' and in my judgment the doing of what was done, believing it to have been *bonâ fide* and honestly done, does not come within the meaning of 17 & 18 Vict. c. 102, s. 4."

Refreshments given to committee-men.

General prevalence of corrupt practices.

Election void at common law.

Influences due and undue.

Speaking of the evidence which had been given in support of the petition, and observing that it did not satisfy him that the election was void at common law, he said:—"The law is that voters should exercise their franchise freely; that is the expression to be found in the law books; and the meaning of 'freely' is that a man upon whom the Legislature has conferred the elective franchise, should exercise his own judgment, and should arrive at a conclusion which of the candidates he honestly believes is the best person to represent the borough, and give his vote for him. If it could be, it ought to be given from the man's own judgment, and no influence whatever ought to be brought to bear upon him. The policy and the theory of the law is, that a man upon whom the elective franchise is conferred should judge for himself which is the best and preferable candidate, and give his vote accordingly. But influences are brought to bear upon men which cannot be prevented. There are some influences which are called due influences, and other influences which are called undue influences, and the law has endeavoured to punish the use of undue influences. Amongst these influences there are what are called bribery, treating, and oppression, that is, an improper and undue pressure put upon a man. But if pressure is put upon a man, or a bribe is administered to him, no matter by whom, or refreshments are given to a man, no matter by whom, for the purpose of affecting his vote, the effect is to annihilate the man's vote, because he gives his vote upon an influence which the law says deprives him of free action; he becomes a man incompetent to give a vote, because he has not that freedom of will and of mind which the law contemplates he ought to have for the purpose of voting. But that affects the man alone, it does not affect the candidate; it has merely the effect of extinguishing the vote, and if there was a scrutiny for the purpose of ascertaining who had the majority of lawful votes, that man's vote ought to be struck off the poll, but that is all. But it has been long held, before these Acts of Parliament passed at all, that by the common law of the land, that is, law not created by the enactments of Acts of Parliament, bribery, undue influence, and undue pressure vitiate an election. So that if it had been proved that there existed in this town generally, bribery to a large extent, and that

it came from unknown quarters, that no one could tell where it had come from, but that people were bribed generally and indiscriminately; or if it could be proved that there was treating in all directions on purpose to influence voters, that houses were thrown open where people could get drink without paying for it,—by the common law such election would be void, because it would be carried on contrary to the principle of the law."

Costs followed the event. Costs.

CASE VIII.

BOROUGH OF WARRINGTON.

BEFORE MR. BARON MARTIN, FEBRUARY 4, 1869.

Petitioners: Miles Crozier and others.

Respondents: Mr. Rylands and the Mayor of Warrington.

Counsel for Petitioners: Mr. Price, Q.C., Mr. Campbell Foster.

Agents: Messrs. Baxter, Rose, and Norton, Messrs. Beamont and Davies.

Counsel for Respondents: Mr. Quain, Q.C., Mr. Edwards, Mr. Coventry.

Agents: Messrs. Wyatt and Hoskins, Messrs. Blair and Charlton, Mr. Moore.

Allegations in petition as to irregularities at the election.

THE petition contained the following allegations amongst others. That several votes were duly tendered or intended to be so in favour of Mr. Greenall, but they were not in any way included or taken into account, and that if some of the votes of the Petitioners and of others were not duly tendered in the form required by law, it was solely in consequence of the irregularities and confusion which prevailed at the polling-booth, No. 1, for the south-east polling district, and in consequence of the defective arrangements made by the returning officer, and the negligence and incompetency of the deputy returning officer and poll-clerk for this booth; that the votes of several voters were never recorded, and the said poll-clerk did not duly and indifferently take the poll; and that similar mistakes and errors were committed by other poll-clerks.

Prayer of petition.

The petition prayed that it might be determined that the Respondent Rylands was not duly elected, and that the election was void; and, secondly, that if the election were not declared void, it

might be determined that the Respondent Rylands was not duly elected, but that Mr. Greenall was and ought to have been returned.

Confusion at polling booth does not avoid election.

Duty of every voter to tender his vote to poll clerk.

In support of the first part of the prayer of the petition it was proved that at one of the polling-booths, upon the resignation of another man, a person named Dickson, who was deemed fit for the post, was appointed to be poll-clerk. Dickson went to the polling-booth and took his seat at first in a place which was not the usual place for the poll-clerk to sit at, but he was afterwards removed by the returning officer to another and a better place. The persons who went to vote instead of going in steadily one by one, rushed up in a crowd in front of the place where Dickson was sitting, and, instead of orally tendering their votes they held up tickets for him to take, and then thrust them over on to his book. Some of these tickets were taken in by a man named Lowe, a check-clerk of one of the candidates, who was sitting in the booth, and by him handed on to Dickson, without any personal tender of the vote being made to Dickson by the voter himself. Partly owing to this rush of persons, and partly also in consequence of Dickson not turning out to be a very competent man, there was a confusion at this polling-booth for an hour or so, and the votes of a number of persons were either not recorded at all or wrongly recorded.

Mr. *Price*, in summing up the Petitioner's case, contended that in consequence of this confusion, and owing to the incompetence of the poll-clerk Dickson, the electors had, by no fault of their own, been prevented from exercising their franchise ... differently, and that therefore the election ought ... In support of his argument he cited the Harwich case ... committee had held an election to be void ... been closed a few minutes too soon, whereby ... only had been prevented from voting, although ... six. He submitted that it was the nature ... to ask for the poll-clerk, but for the ... self, and that it was the duty of the ...

* 1 Power, Rodwell & ...

as each voter came up, that he tendered his vote to the right person, otherwise that voter would not have that free opportunity of exercising his privilege of voting to which he was entitled. This was not a question of ordinary scrutiny, or a seeing whether the unsuccessful candidate should have these votes added to his number, but rather whether the electors had been deprived, not by their own wrong, of their privilege of voting. Although in some cases the tender had not been a good one, that was not through the fault of the voters, but through the fault of the returning officer.

Mr. Baron MARTIN, in giving judgment on the first prayer of the petition, said as follows:—

"I am of opinion this is not a void election. It was stated by Mr. Price that it was entirely through the fault of the poll-clerk Dickson, that the poll was not properly taken. That is not correct. It was quite as much the fault of the persons who were crowding up to him and presenting their tickets in such a manner as to prevent him from taking them one by one. Then again, Mr. Lowe ought never to have taken a ticket from a voter. I do not mean to insinuate that Mr. Lowe meant wrong, but I say that Mr. Lowe and the voters, as well as Mr. Dickson, were parties to the irregularity that took place. Then the question is, is this to be declared a void election? Supposing it happened that the votes of half-a-dozen out of 2000 or 3000 voters are omitted to be taken, are all the other votes to be set aside, and the election declared void? It would be in my opinion ridiculous to say that because at one booth there was an irregularity, the whole of the rest of the borough should be put to the trouble of a new election, and all that has taken place declared null and void. I adhere to what Mr. Justice Willes said at Lichfield, that a Judge to upset an election ought to be satisfied beyond all doubt that the election was void, and that the return of a member is a serious matter, and not to be lightly set aside.

Mr. *Price* then stated that the second prayer of the petition would be abandoned.

Costs.

Mr. Baron MARTIN said:—"If any costs have been incurred by

the returning officer by reason of the petition against him he must be reimbursed; with respect to the other parties to the petition they must pay their own costs. I think it was a reasonable and fair petition."

The following points were decided in the course of this case.

A witness, Dewhurst, proved as follows :— Tender of vote.

When I went to the polling-booth, Lowe, a check-clerk, was sitting in the middle, and Dickson, the poll-clerk, was the first on the bench. I gave my card to Lowe, thinking he was the poll-clerk, and told him I voted for Greenall. I waited a sufficiently long time, thinking they were writing it down, and I then said, "Is that right?" Lowe answered "Right." It was not till the next morning that I found my name was not entered on the poll. How to be made. (2) 108.

Mr. Baron MARTIN :—I am clearly of opinion that was a bad tender.

Another witness gave the following account of the way in which he voted :— (1) 320.

"I told the poll-clerk Dickson the number, and said, 'This is my card, Henry Bennett, vote for Greenall, No. 244 is my card.' He took the card, but I do not know whether he wrote it down or not, but he said, 'All right.'"

Q. And then you went away?—*A.* Yes.

Q. And you found afterwards on inquiry that your vote had not been entered?—*A.* Yes.

Mr. Baron MARTIN :—When you vote again, do not leave the place till you see that your name is entered.

In the course of the case, Mr. Baron MARTIN said :—

"If a man, instead of asking who was the person to take his vote, were to go and put a ticket before a man who was not the poll-clerk and leave it there, that man has not voted at all. He has no right to complain. He ought to have taken the ordinary trouble to ascertain that he had voted aright. What more can the Mayor possibly do than put a poll-clerk in the booth; if people will not inquire who is the poll-clerk, they must take the consequence." (1) 230.

And in the course of his judgment he said further as to this:—

"The ticket is merely given to the voter to enable him to vote with greater ease, it has nothing to do with the voting. Properly speaking, the poll-clerk ought to have nothing to do with tickets, but he should take from the mouth of the voter 'for whom' he votes, his number on the register, and his address. The 2 Will. 4, c. 45, s. 65, enacts, that the returning officer shall appoint a clerk to take the poll, who, at the conclusion of the election, is to seal up the poll-books and publicly deliver them to the returning officer. It is therefore clear that the person to take the poll is the poll-clerk, and it is the duty of all persons who go to vote to ascertain who that poll-clerk is, and they must take the trouble to inquire. The Act clearly means that it is to the poll-clerk whom the returning officer has appointed to take the poll that the communication of the will of the voter must be made, and that the communication of that will to any one else will not do. It would be improper and wrong to hold that a communication made by a voter to a person not the poll-clerk, could be considered a legal tender of his vote."

Votes may be added to the poll if duly tendered.
(2) 2.

At the commencement of that part of the case which related to the second part of the prayer of the petition,

Mr. *Price*, for the Petitioners, handed in a list of the persons whose names he submitted should be added to the poll.

Mr. Baron MARTIN asked if there was any precedent for adding votes to the poll, when voters had done their utmost to record their votes, and by the mistake of the poll-clerk their names were omitted?

Mr. *Price*:—"I can find no precedent for that."

Mr. Baron MARTIN (to Mr. Quain):—"I believe you do not dispute that if a vote has been duly tendered it may be added to the poll."

Mr. *Quain*:—"Not if in your Lordship's opinion it has been duly tendered."

Mr. Baron MARTIN:—"That is a mere matter of fact for me."

CASE IX.

BOROUGH OF WESTBURY.

BEFORE MR. JUSTICE WILLES, FEBRUARY 2, 1869.

Petitioner: Mr. Abraham Laverton.
Respondent: Mr. J. L. Phipps.
Counsel for Petitioner: Mr. Cole, Q.C., Mr. Henry James.
Agents: Mr. Rowland Rodway, and Messrs. Warry, Robins, and Burgess.
Counsel for Respondent: Serjeant Parry, Mr. Besley.
Agents: Messrs. Pinniger and Son, and Messrs. Godwin and Pickett.

THE petition contained the usual allegations of bribery, &c., and prayed the seat upon a scrutiny.

It was proved that a manufacturer in the town, who was an agent of the Respondent, told his workmen that no man should remain in his employment who voted for the Petitioner, who was his rival in trade, and that these men or some of them, were obliged to leave his employment in consequence of their refusing to abstain from so voting.

Evidence was given for the Respondent in support of a recriminatory charge against the Petitioner, which, although it failed, was of a serious character, and was said by the Judge to have been rightly brought forward.

In the course of the case,

It was proved that one Harrop, a manufacturer in the town, had been asked by the Respondent for his vote and interest; that

Limited authority to canvass makes Respondent liable to that limited extent.

afterwards he had canvassed his workmen for the Respondent, and had dismissed certain of them because they refused to vote for the Respondent; and it was submitted thereupon on the part of the Petitioner that the Respondent was liable for this act of Harrop.

Mr. Justice WILLES said:—"Asking a person in Harrop's position for his 'vote and interest' might mean 'go round and canvass your workmen for me,' though that might not be the case with ordinary voters. But if it did mean that, it would not be an authority to canvass beyond the scope of the workmen in his employ. With respect to anything done as to voters other than these workmen, it might very well be said there was no agency, but within the scope of the authority to act as agent there was quite as strong a responsibility on the part of the candidate as there would be in the case of a general authority to canvass."

Petitioner not obliged to be called as a witness when there is a recriminatory charge, but if there is any ground for suspicion, judge is bound to call him himself.

Parliamentary Elections Act, 1868, s. 32.

The Petitioner himself not having been called as a witness in support of his case,

Serjeant *Parry*, in opening the Respondent's case, said that as a recriminatory charge was made against the Petitioner, he had been very much taken by surprise by the fact that he had not been called as a witness. This was almost the invariable practice. He apprehended his Lordship would have to make a report to the Speaker as to whether the Petitioner was guilty of any and what offences.

Mr. Justice WILLES said he was bound to inquire if there was reasonable ground for supposing or even suspecting that the Petitioner was guilty of anything, but for that purpose he was bound to act upon section 32 of the Parliamentary Elections Act, 1868, which gave him the authority to examine witnesses himself: but he was not bound to inquire into this when there was, as here, no ground of suspicion. It was not intended that the Judge should hold, so to speak, an investigation, but only follow up any clue which the evidence of either party might present, especially if he saw anything like collusion.

Gossip no evidence,

A witness was asked in cross-examination, Did you not say you were not a voter?—*A.* No; I did not say so.

In re-examination he was asked, Did anybody else say you were not a voter?—*A.* Yes; William Raines said so.

except on a scrutiny. (1) 30.

Serjeant *Parry*, for the Respondent, objected to what Raines said, as not being evidence.

Mr. Justice WILLES said:—"Mere gossip is no evidence, except self-disabling evidence on a scrutiny."

A person who had not been subpœnaed as a witness having given evidence, at the close of his examination asked whether he could claim his expenses.

Expenses of witness not subpœnaed. (2) 70.

Mr. Justice WILLES said:—"I think as this witness was not subpœnaed, I ought before the examination of the witnesses to have been asked that the witness should be examined under section 32 of the Parliamentary Elections Act, 1868, which authorises a Judge either to send for a witness not in Court, or to direct a witness not in Court to be examined. This witness was not subpœnaed, and I think the section authorises me to order the expenses to be paid. The officer suggests that I should direct them to be paid by the Petitioner; but inasmuch as this witness was adverse to the Petitioner, if I gave him a remedy against the Petitioner, it might cost him a great deal more than his expenses. I had better, therefore, act on the equity of the section, and direct that he should be considered as a witness examined by the Court; then his expenses, whatever they are to which he is legally entitled, will be paid. If any other witness desires to take the same point about his expenses, he must do so before he is sworn."

It was proved (as part of the recriminatory case) that the Petitioner had sent a cheque for £10 as a subscription to a dissenting congregation almost at the same time as he issued his address as a candidate.

Subscriptions not a corrupt practice. (3) 286.

Mr. Justice WILLES:—I wish I could be spared the theological part of the case, unless it is a very clear case.

Mr. *Cole*:—If your Lordship thinks nothing of it, I will not press it.

Mr. Justice WILLES:—No; I do not say I think nothing of it. I have myself often observed that people who mean to become candidates often subscribe to things they would otherwise not

have subscribed to; but I think that is a step off corrupt practices; it is charity stimulated by gratitude or hope of favours to come.

Treating evidence of intention. (4) 110.

At the close of the case,

Mr. Justice WILLES said he would take that opportunity of observing that he did not wish it to be supposed (as had been supposed by some people from some expressions of his in another case) that treating by a single glass of beer would not be treating if it were really given to induce a man to vote or not to vote. All he had ever said was that that was not sufficient to bring his mind to the conclusion that the intention existed to influence a man's vote by so small a quantity of liquor.

Mr. Justice WILLES in his judgment declared the election void on the ground of intimidation, within 17 & 18 Vict. c. 102, s. 5.

Threat of dismissal of workmen intimidation under 17 & 18 Vict. c. 102, s. 5.

He said that the facts as to the case of Mr. Joseph Harrop were as follows:—

"Mr. Harrop was a manufacturer and a large employer of workmen in the borough. The Petitioner was his rival in trade, against whom he entertained an angry feeling. Almost as soon as it was found probable or possible that the Petitioner was likely to come forward as a candidate for the borough, Harrop began interrogating his men as to whom they were likely to vote for. The men, or some of them, told him they did not intend to vote at all. He commended their resolution, and extracted a promise from them that they would adhere to it. Shortly afterwards he consented to become a member of the Respondent's Committee, and he then commenced canvassing for the Respondent those same men from whom, just before, he had extracted a promise not to vote at all. Certain men in his employ at the latter end of October declined to vote otherwise than for the Petitioner, having promised him so to do. When this came to Mr. Harrop's knowledge he brought these men before him and said what amounted in substance to this: 'I have determined that no man shall remain in my employment who votes for Laverton; if you vote for Laverton you shall have no further employment from me.' In the case of two men he asked affirmatively, 'Will you vote for

Phipps?' These men did in fact all leave his employment before the election, but it was not proved that they were actually discharged on account of their political opinions, and it was suggested by Mr. Harrop that some of them were discharged on account of their untruthfulness in voting at all after promising not to vote. It was also suggested that some of them left voluntarily. Though in one sense they may have gone voluntarily, they did not go willingly, any more than a man acts willingly when he voluntarily takes to a small boat in the middle of the ocean when his ship is on fire. There was a compulsion upon these men which they could not resist, and I am satisfied that all these men would have remained in the employment of Harrop but for their having promised to vote for the Petitioner, or if they had changed their minds as Harrop willed and had voted for the Respondent. Two questions arise on this state of facts.

"The first is, Does this conduct of Harrop amount to undue influence or intimidation within the 17th & 18th Vict. c. 102, s. 5?

"I cannot take this conduct of Harrop with respect to any one of these individual men as standing by itself. I cannot look at his conduct as being the single act of an angry person dealing with one voter who was under his influence. I must look at the whole of it together. If he had threatened the lives or limbs of the men, there could be no doubt that that would have been within the section; but it is not mere poetry to say,

> 'You take my life
> When you do take the means whereby I live.'

A man who is sent out to live upon the charity of his fellow workmen, or to go to the workhouse with his family, unless he does a particular thing, is intimidated; but is that an intimidation within the section? The 5th section forbids appealing to a man's fears by means of violence or intimidation. The Act says, 'Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of, any force, violence, or restraint, or inflict or threaten the infliction, by himself or by or through any other person, of any injury, damage, harm, or loss.' Upon these words a question might arise whether they are not to be understood in a direct sense, and whether you

must not only show damage, but damage the result of some injury for which an action might be maintained at law, and it might be pleaded as to these words that the damage resulting from being dismissed from an employment when the master had a legal right to dismiss, was not a damage arising within that description, and therefore not within the statute. I need not, however, express my opinion upon that, because the following words are large enough to include every sort of intimidation, every sort of conduct which would operate upon the mind of another, and terrify or alarm him into doing what the person misconducting himself willed, against his own free will, because the words are, 'or in any other manner practice intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting.' The 17 & 18 Vict. c. 102, s. 2, (2) among other things, makes the promising 'to procure,' or endeavouring 'to procure any office, place, or employment to or for any voter,' bribery. And reading the 5th section by the light thrown upon it by the 2nd, I can have no doubt that that which it would be bribery to promise the enjoyment of, is (in this case at least, and with reference to these circumstances) intimidation to threaten the deprivation of.

"The second question is, What is the effect upon the election of the violation by an agent of the Respondent of the provisions of the 5th section, by intimidation?

"Here again I must observe that I do not treat this as a single case of intimidation; I must treat it as part of a system which continued throughout the time that Harrop was an agent for the Respondent for the purpose of canvassing. The question as to the effect upon the election depends first of all upon the common law of Parliament, and secondly, upon the construction of the 17th & 18th Vict. c. 102, s. 36. By the common law of Parliament a single bribe given by an agent at an election had the effect of avoiding that election. It does not fix the candidate with penal consequences, it simply says that for the public good in order that agents may be deterred from resorting to undue means for the purpose of procuring the election of the candidates employing them, an election in which an agent has so misconducted himself shall be void, not to punish the candidate, though it indirectly

so operates, but to protect the public and to prevent the like practices, if possible, for the future.

"But it has been said on behalf of the Respondent, First, that there is a distinction between bribery on the one hand, and undue influence and treating on the other, and that this distinction exists in two particulars especially.

"(1) That a single act of undue influence ought not to prevail, because it is hard that the Respondent should be liable for his agent's conduct. But the law deals in this instance with the validity of the election, and not with the penalties imposed upon the candidate.

"(2) That a single act of undue influence by an agent ought not to defeat the election. But I find no such limitation in 17 & 18 Vict. c. 102, s. 36. I find that the candidate and his agents are put upon the same footing. To take an illustration. If a candidate, who is an employer of labour, were to inform all persons in his employ either that he would discharge any man who did not vote for him, or that he would discharge any man who voted for the other candidate, inasmuch as he was his personal enemy, that would avoid the election, and it is inevitable that it must do so equally if the undue influence be exercised by an agent, because section 36 says 'or his agents.'

"Secondly, it has been said that it is left in the discretion of the judge to say how much undue influence shall or shall not affect an election. But that is impossible. By the Parliamentary Elections Act, 1868, s. 11, I have no discretion one way or the other. I must pronounce for the truth as I believe it upon the facts, and for the law as I best know it upon questions of law.

"Thirdly, it has been said that to put the construction upon 17 & 18 Vict. c. 102, s. 36, that this election which is gone by is avoided, would be begging the question, because section 36 means that if any candidate at an election . . . . shall be declared guilty . . . . of bribery, &c., at such election, such candidate shall *in futuro* be incapable of being elected or sitting in Parliament . . . . during the Parliament then in existence. The argument, no doubt, is a plausible one, but the answer to it is this. It is in truth a begging of the question to say that it is a begging of the question. Because the question here is not merely whether the Respondent

shall *in futuro* be capable of being elected, but whether he shall *in futuro* be capable of sitting in Parliament in respect of what took place at the election which has gone by. Therefore the inquiry must be in respect of what took place at the election which has gone by, and to say that it is begging the question, therefore, is only another form of that mode of begging the question which is forbidden by the legal maxim, *Non debet adduci exceptio ejusdem rei cujus petitur dissolutio.* It is quite obvious, therefore, that the begging of the question would be in not treating that section as applicable to the election in question.

"Fourthly, it is said that the influence to defeat the election must be influence operating as a kind of terror, and that that did not exist here. But there was terror, whether it be more or less, still a terror amounting to intimidation at Harrop's factory for some time before the election, and a strong feeling that men would be dealt with differently according as they voted one way or the other, which feeling, produced by illegitimate means, is to be prevented, and the persons who are likely to feel it are to be protected by law.

"Fifthly, it was said that although Harrop was an agent of the Respondent, and did intimidate under 17 & 18 Vict. c. 102, s. 5, he did not intimidate as an agent, and that therefore his principal is not bound; and it was said, by way of illustration of that view, that although a master is answerable for a negligent act of his servant in the course of his employment, he is not answerable for his wilful and spiteful act for his own purpose, not in the course of his employment; and that might be carried further, because a master would not be liable to some person run over by his carriage driven by his coachman upon some errand of his own, entirely out of the scope of the employment of the master. There can be no doubt of that; but I might put, on the other hand, a variety of cases in which a principal is held liable, even civilly, for an act of his agent, which he never intended, and at which he is exceedingly displeased; the case of a bank held liable for the fraud of a manager or clerk, the case of a person who employs a man to navigate his boat for hire, held liable for the infringement of a ferry by the boatman without his authority and against his will; and a case which occurred in London in the rivalry between

the omnibuses, where the proprietor of an omnibus was held liable for the wilful act of his coachman in cutting in before another omnibus and injuring the vehicle and the horses, and I think one of the passengers, for the purpose of getting a fare, having in his mind at the time the compound motive of effecting his own spiteful desire, and at the same time of getting before the other omnibus to get a fare for his master. This case was very much considered in the Exchequer Chamber, and was held by a large majority of the judges to be a case of liability; or I might put even the more apposite case of a man employing another to steer and assist in the management of his vessel in a race, where by the act of one of the crew wholly unauthorised by the employer, a foul took place in wrong of a rival, and the employer's vessel wins; in such a case, even if it were proved to demonstration that notwithstanding the foul, the race would have been won by the vessel on board of which the misconduct took place, it would surprise one if, by any rule either of honour or of law, the prize was given to the vessel which was in fault; no innocence of the employer could have any effect upon his loss.

"Here, if Harrop did what he did out of hostility to the Petitioner, that certainly cannot add merit to his act; the question is, whether the act was done with the object of assisting the Respondent in the course of his canvass. I have no doubt that was the object, though it was to serve him at the expense of the Petitioner; the object was to get the Respondent returned, though the motive was to spite the Petitioner, and to prevent him from being elected."

Canvassing by procurement of respondent, no matter how, creates agency.

As to the agency of Harrop, he said:—"It was proved that Harrop was a large employer of labour, and was desirous of canvassing his own workmen for the Respondent. The Respondent not only desired Harrop to canvass for him, but he also (whether expressly or impliedly, whether by words or actions, it is immaterial) conveyed that desire to him. Accordingly Harrop did canvass for the Respondent, and in so doing I come to the conclusion that he acted as his agent. For an agent to bind another it is not necessary that there should be any payment, it is only necessary that the act done by the agent upon which the question arises whether it is to bind the principal should be an act done by the procurement of the principal."

Definition of canvassing.

As to what canvassing is, he said:—"Canvassing may be either by asking a man to vote for the candidate for whom you are canvassing, or by begging him not to go to the poll, but to remain neutral, and not to vote for the adversary. No distinction can be drawn except in the amount of favour between voting for a man and abstaining from voting for his adversary. That such is the law appears from the 17 & 18 Vict. c. 102, which places on the same footing inducing a man to vote at an election and inducing a man to abstain from voting."

Costs.

"I have already intimated that I do not propose to make any order (I am not bound to state any reasons why I make no order) as to the costs, and it is quite obvious why I do make no order. The scrutiny which was claimed has been abandoned; personal attacks were made upon Mr. Phipps which in the result have entirely failed; and the recriminatory case, though it did not amount to proof to satisfy my mind to report against Mr. Laverton, was of so serious and weighty a character that I think it was quite right to bring it before the court."

CASE X.

BOROUGH OF WALLINGFORD.

BEFORE MR. JUSTICE BLACKBURN, FEBRUARY 2, 1869.

Petitioner: Sir C. W. Dilke, Bart.

Respondent: Mr. Stanley Vickers.

Counsel for Petitioner: Mr. Merewether, Mr. Poland, Mr. Carswell.

Agents: Messrs. Fladgate, Clarke, and Finch.

Counsel for Respondent: Mr. Serjeant Ballantine, Mr. Francis, Mr. Montague Williams.

Agents: Messrs. Child and Son.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It appeared that several voters, who lived some way off, were invited by an agent of the Respondent to come to his house, in order that he might convey them to the poll in his own carriage. They came accordingly the day before the election, and slept at his house that night. While they were there they were treated to drink and tobacco, but upon the evidence it was not shown that there was any corrupt intention in this treating.

An unsuccessful attempt was also made to prove treating at various public-houses.

In the course of the case,—

Examination of witness

Serjeant *Ballantine* said he understood the Court had power to allow a commission to issue to examine a witness who was dan-

under a commission. (3) 353.

gerously ill; he was informed he was not expected to live through the night.

Mr. Justice BLACKBURN ordered the witness to be examined *vivâ voce* before the registrar of the Court. Counsel would be at liberty to attend and ask what questions they liked, and a short-hand writer must also be present.

The registrar was first desired to see that the man was in a fit state to be examined without endangering his life, and after inquiry it was found that the witness was too ill to be examined at all.

Mr. Justice BLACKBURN in his judgment declared the Respondent duly elected.

Treating, evidence of intention.

Speaking of the facts which had been proved in support of the charge of treating, he said:—

"This is one of the cases that I have had a great deal of trouble in considering. For, on the one hand, it is not one of the cases in which there could be no doubt that the effect would be to unseat the member, nor, on the other hand, is it one of the cases in which it is clear that the member is to retain his seat. It is one of the cases in which there is matter to be considered, and seriously to be considered, in order to say whether or no there was such an amount of corrupt treating as to avoid the election. As to the law, I quite agree that 17 & 18 Vict. c. 102, s. 23, does not affect the question of treating. It imposes a penalty wisely enough for the purpose of checking the practice of giving meat or drink at elections, and it imposes it whether the person be a candidate or any one else, the intention of the legislature being that there should not be any such entertainment given on the polling day. The 4th section is that on which it all turns. I cannot doubt that the intention of the legislature in construing the word 'corruptly' was to make it a question of intention, which must be ascertained, as all questions of intention must, by looking at the outward acts of the parties and seeing the degrees and extent, and then drawing the conclusion from the facts; a conclusion which may be, to a certain extent, doubtful, when we are considering what were the intentions. I think that what the legislature means by the word 'corruptly' for the pur-

pose of influencing a vote, is this: that whenever a candidate is, either by himself or by his agents, in any way accessory to providing meat, drink, or entertainment for the purpose of being elected, with an intention to produce an effect upon the election, that amounts to corrupt treating. Whenever also the intention is by such means to gain popularity and thereby to affect the election, or if it be that persons are afraid that if they do not provide entertainment and drink to secure the strong interest of the publicans, and of the persons who like drink whenever they can get it for nothing, they will become unpopular, and they therefore provide it in order to affect the election—when there is an intention in the mind either of the candidate or his agent to produce that effect, then I think that it is corrupt treating. But everything is involved in the question of intention, and it becomes important to see what is the amount of the treating. The statute does not say or mean that it shall depend upon the amount of drink. The smallest quantity given with the intention will avoid the election. But when we are considering, as a matter of fact, the evidence, to see whether a sign of that intention does exist, we must, as a matter of common sense, see on what scale and to what extent it was done. No one would think it reasonable to draw the conclusion from the mere giving of a thimbleful of drink (to use a strong expression), that it was done with any intent to influence the election so as to bring it within the statute. It is equally certain that in the case of a person giving a large number of thimblefuls one would draw the conclusion that there was such an intention. But it must always be a question more or less of evidence, and the inference which the Court draws from the facts must to some extent depend upon the peculiar views of the minds which have to draw the inference, and there must, therefore, always be a certain measure of doubt in that respect. But I take it there is no doubt that the point to be considered is, Was it given with an intent to influence the election?

"Now the facts of this case are clear:

Facts of the case.

"Seven voters, no doubt to some extent under the influence of Mr. Deacon, the Respondent's agent, were to go to poll the next morning. Deacon had requested them to come to his house at half-past seven, and he would carry them there in his carriage. I

presume Deacon's object in doing this was to insure their polling early. Then it would appear that without Mr. Deacon having directly asked them, Mr. Deacon's servant consented to their sitting up all night in the kitchen, and Mrs. Deacon, when they were there, gave them some drink and tobacco. Now there can be no doubt that this was given to these seven men because they were about to vote for the Respondent at the election. If, therefore, Mr. Merewether was right in his proposition of law which he laid down, that anything of that sort done on account of the election would avoid the election, that would avoid the election. But I think we must see the degree and manner in which it was done to see that it was really done with a corrupt intention, which I understand to mean an intention to produce that result which the legislature intended to forbid; and I cannot upon that draw the conclusion that such entertainment given to these seven men in this way was an act of treating within the meaning of the statute, though of course it was evidence to be taken into consideration with other things in order to see whether there was corrupt treating."

Imprudent for candidate to have scores at public-houses.

With regard to scores at public-houses, he said:—

"I cannot lay it down, as a general rule, that to have a score at a public-house amounts to treating. As a matter of prudence, I should strongly advise candidates to have no score at all; let them pay their paid agents, and let the paid agents find themselves; let them pay nothing at all to supply refreshments for committee-men, and those who act gratuitously. The candidate will thus avoid any score at a public-house, and will not be in any peril of having treating put upon him."

Costs. (3) 242.

A witness, George Wilson, not having given the evidence in support of the petition which he was expected to have given,

Mr. Justice BLACKBURN said the Petitioners ought to have better ascertained previously what the witness could prove, and that for that reason he should not be disposed to allow his costs in the event of the petition succeeding.

In the course of Mr. Merewether's reply,

Mr. Justice BLACKBURN said, in consequence of the Petitioner's attorney not having properly prepared the case beforehand, there

had been much waste of time, and he should not, therefore, feel disposed in any case to allow the Petitioner's costs; if the Petitioner suffered owing to the neglect of the attorney, he must take his own remedy.

Ultimately, as the petition was unsuccessful, costs followed the event in the usual way.

CASE XI.

BOROUGH OF CHELTENHAM.

BEFORE MR. BARON MARTIN, FEBRUARY 8, 1869.

Petitioner: Mr. J. A. Gardner.

Respondent: Mr. Samuelson.

Counsel for Petitioner: Mr. Huddleston, Q.C., Mr. Edward Clarke.

Agent: Mr. Ridge.

Counsel for Respondent: Mr. Serjeant Sargood, Hon. E. Chandos Leigh, Mr. Fallon.

Agent: Mr. Chesshyre.

THE petition contained, amongst others, an allegation that the Respondent was guilty of undue influence under 17 & 18 Vict. c. 102, s. 5; but it did not contain any allegation as to the election being void at common law on account of general intimidation, and it did not pray the seat.

It was found that a prize-fighter had been employed on behalf of the Respondent to intimidate voters, and some evidence of general violence was given, but it failed to establish such a case of general rioting as could avoid the election at common law.

It was also proved that some person paid the rates of a number of voters, to enable them to be registered; but it did not appear that the Respondent had had anything to do with this payment, or that it was made with the intention of influencing the votes of the persons so registered.

In the course of the case,

Addition of cases of bribery on second day of trial. (2) 1.

Mr. *Huddleston*, for the Petitioner (at the beginning of the second day of the hearing of the case), asked permission to add two other names to the list of bribed persons, already handed in.

Mr. Baron MARTIN.—I shall require a very strong affidavit in that case, and I shall only take it on summons.

Mr. *Huddleston* inquired in what form the affidavit should be.

Mr. Baron MARTIN.—When it was discovered—when it was first known. I shall require a very strong affidavit on the second day of the trial.

Witness's mark, C. L. P. Act, 1854, s. 22, 24. (2) 148.

A witness in examination in chief was shown a paper, and was asked:—

Q. Did you make your mark to this paper? *A.* I do not know.

Q. Is that your mark? *A.* I could not swear.

Mr. Baron MARTIN.—Before you can ask whether it is his mark, you must go further. You must act upon the Common Law Procedure Act, 1854, s. 22. You must take the witness through the matters that are required to be proved by that section; and you must also satisfy me that he is an adverse witness.

Mr. *Huddleston* cited s. 24.

Mr. Baron MARTIN.—But you are not cross-examining him—he is your witness; that makes all the difference in the world.

Corrupt payment of rates. Representation of the People Act, 1867, s. 49.

Mr. *Huddleston*, for the Petitioner, before proceeding with the evidence in support of the charge of corrupt payment of rates, called the attention of the Court to the wording of the 49th section of the Representation of the People Act, 1867. He pointed out that the word "corruptly" was used only where the rate was paid on behalf of a ratepayer, to enable him to be registered as a voter, but was not used when the rate was paid on behalf of a person already a voter.

Mr. Baron MARTIN:—Paying a rate on behalf of a voter, to induce him to vote, would be the same thing as paying the money into the hands of a voter; it would be direct bribery.

Subsequently in his judgment, he said:—

"It has been proved that some person, or persons, did pay the

rates of a number of voters; and if it had been also proved that the Respondent, or any person for whom he was responsible, had paid those rates, the Respondent would then have been guilty of bribery under 30 and 31 Vict. c. 102, s. 49. But that has not been proved. I may further say that, even if there had been evidence of who paid the rates, I should expect that further evidence would be necessary to bring it within this section. The money was obviously paid to enable the voters to be registered. But in order to make the payment of a rate for the purpose of enabling voters to be registered affect the election, you must prove that it was done corruptly; that it was done thereby to induce them to vote for that person on whose behalf the payment was made."

Mr. Baron MARTIN, in his judgment, declared the Respondent duly elected.

What may be given in evidence under 17 & 18 Vict. c. 102, s. 5.

With regard to the allegation in the petition, that the Respondent had been guilty of undue influence within the meaning of 17 & 18 Vict. c. 102, s. 5, he said:—

"My impression is, that evidence given to show that the election is void at common law, by reason of its having been carried by force or intimidation, whereby the freedom of election has been violated, and persons have been prevented from freely exercising their franchise, is not within this 5th section, which was directed, like the bribery and treating section, to the unduly influencing of individual voters, not to general rioting or violence; and if it were necessary for me to decide the case with reference to this 5th section alone, I should reserve it for the opinion of the Court of Common Pleas.

"In the event of its being thought fit to rely on evidence of this sort for the purpose of affecting an election, another paragraph should be put into the petition, and the objection to the election should be 'general violence being used towards voters.'"

Stronger evidence necessary of mere offer of bribe.

With regard to the evidence necessary to establish a case of a mere offer of a bribe, he said:—

"Where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself, or where the alleged bribing is an offer of employment within the meaning of 17 & 18 Vict.

c. 102, s. 2 (2), it ought to be made out beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence; but one person understands what is said by another differently from what he intends it."

Costs will follow the event. Costs.

CASE XII.

BOROUGH OF STALEYBRIDGE.

BEFORE MR. JUSTICE BLACKBURN, FEBRUARY 13, 1869.

Petitioners: James Ogden, John Woolley, Abel Buckley.

Respondent: James Sidebottom.

Counsel for the Petitioners: Mr. Pope, Mr. Edwards.

Agents: Messrs. Reed, Phelps, and Sedgwick.

Counsel for the Respondent: Mr. Higgins, Q.C., Mr. Leresche.

Agents: Messrs. Baxter, Rose, and Norton.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

Evidence was given to prove that corrupt treating had taken place at two public-houses, the Star, and the Albion; but the witnesses called for the Respondent proved that the evidence on which the Petitioners relied was not trustworthy. Evidence was also given to prove that two men, Evans and Gilbert, had been bribed by a promise of their day's wages, but the agency of the person who bribed them was not proved.

In the course of the case,

Promise of wages bribery, 17 & 18 Vict. c. 102, s. 13.

Agency—unauthorised act of agent of

It was proved that a voter, Gilbert, was promised his day's wages by two men, Thornley and Vaughan, if he would vote for the Respondent. It was proved that Thornley was a publican, and one of the rooms in his house was engaged and used by a committee not selected by the Respondent, but consisting of *bond*

fide volunteers, chosen by the voters of the district as persons in whom they had confidence to be the head of their own department and to act together. At the request of one of these committee-men, Thornley went to fetch Gilbert to vote, and took with him one Vaughan, because Vaughan knew Gilbert. They were not authorised by the committee-man who sent them to promise Gilbert anything for his vote, but they did in fact promise him his day's wages.

volunteer committee does not affect Respondent.

Mr. Leresche, for the Respondent, asked Mr. Justice Blackburn whether he should rule that the promising a day's wages, supposing it were proved, was a corrupt act within the meaning of the statute.

Mr. Justice BLACKBURN said that he should rule that it was so within the meaning of the 17 & 18 Vict. c. 102, s. 1;

And in his judgment said as to this:—

"There can be no doubt that a promise or offer to cause a workman or other person to be no loser by his coming to vote (for instance, that if he will come and vote for a particular person he shall not lose his day's work, that he shall be paid his day's wages for the holiday whilst he votes for such person, instead of having his day's wages as he would if he stayed away from voting and did full work) comes within the meaning of the Act, and is an act of bribery and corruption. Thornley and Vaughan distinctly offered and promised two voters that they should have their day's wages paid them if they would come and vote. That amounted to an act of bribery on the part of those who accepted it, and on the part of those who offered it."

As to the general rule of law relating to agency and its application to the case of Thornley and Vaughan, and as to the effect of their acts upon the Respondent,

Mr. Justice BLACKBURN, in his judgment, said:—

"The Parliamentary practice, beginning from early times, always was that a member was not merely to lose his seat on account of bribery committed by himself personally, or which he personally did, but that he also was to lose it when he was guilty of bribery by his agents. The reason of that was obvious enough. Candidates put forward agents to act for them, and if it were permitted that these agents should play foul and that the candi-

date should have all the benefit of this foul play without being responsible for it in the way of losing his seat if the foul play was committed by the agents without the candidate having precisely known it, great mischief would arise. Then again, one cannot shut one's eyes to the fact that to a great extent where corrupt practices were committed, they were committed by persons who carefully abstained from letting the member know precisely what they were going to do. They were in such a position that they could act actively and spend money, and yet the candidate might be carefully kept in ignorance that they were spending money, but afterwards, when it was all over and when it was too late to petition the House of Commons, they would say to the sitting member, 'Of course I never let you know that I was spending this money, but you have had all the benefit of it, and consequently you are bound in honour to pay me for the expense I have incurred.' In that way there was a great deal of corruption. I do not doubt that these two principal grounds led to what was undoubtedly the practice of election committees, that it was not sufficient to say that the member himself was not guilty of corrupt practices, or did not know of them, but that his seat was lost if he was guilty by his agent. And that law which was recognised by what one may almost call the common law of Parliament is recognised, in my opinion, by the Legislature in the 17 & 18 Vict. c. 102, s. 36, by which it is enacted that if any candidate at an election for any county, city, or borough, shall be declared by any election committee (it is now the election judge) guilty by himself or his agents of bribery, treating, or undue influence at such election, such candidate shall be incapable of being elected or sitting in Parliament for such county, city or borough, during the Parliament then in existence. That section clearly indicates that the Legislature sanctioned the decisions of the House of Commons by which a member guilty by his agents of treating, or any other corrupt practice, was incapable of sitting, and making a distinction between his being guilty by his agents only, and being guilty personally. And the more recent Act, the Parliamentary Elections Act, 1868, where it puts a more severe punishment upon a person personally guilty, clearly shows that there is a distinction whether the man is personally guilty or whether he is guilty by

his agents. Without any personal guilt, if he has by his agents been guilty of corruption, then the seat is vacated and the member can no longer sit for that place during that Parliament.

"Now comes the question, which is one of very great difficulty indeed, What is the definition of agency? What is the relation between the sitting Member and the person guilty of a corrupt practice that shall constitute agency, so as to make the sitting Member responsible for it? On that the decisions of the Election Committees, so far as I have been able to look at them, do not assist me at all, because that tribunal, from the way in which it was constituted, did not give reasons for any of those decisions.

"I have already, in the Bewdley case,* had occasion to decide this much. There it appeared that the sitting member had put a sum of money into the hands of his agent, and that he exercised no supervision over the way in which that agent was spending that money; that he had given him directions, and I thought really intended, that none of that money should be improperly spent; but that he had accredited and trusted his agent, and left him the power of spending the money, and I came to the conclusion upon that, that there was such an agency established as that the sitting member was responsible to the fullest extent, not only for what that agent might do, but for what all the people whom that agent employed might do: in short, making that agent, as far as that matter was concerned, himself, and being responsible for his acts. I see no reason to doubt at all that that is perfectly correct.

"Now, we come further than this. Of course here it clearly is not the case that these men who went and asked the voters to come and vote were agents to that extent. But this much is clear, that the mere act of taking the committee-rooms amounts to evidence that leaves me no doubt at all about this, that the sitting member and the sitting member's people did request the volunteer committees (as I may call them) there to bring up voters when they could; and consequently I think that there was this much, that the persons who, joining these volunteer committees, went and fetched voters, were in one sense employed by the sitting member to bring the voters up. It is upon that, which

* Vide, ante, p. 18.

certainly was the fact here, that Mr. Pope rested his argument upon the case yesterday. Mr. Pope laid it down as a definite proposition of law, that wherever a sitting member or his agents, for whom he was responsible, had employed a person to obtain a vote, though they meant him to obtain it honestly, yet if he did that corruptly which they meant him to do uncorruptly, they must take the consequences. To a very considerable extent I am inclined to agree to that proposition. In the Windsor case * Mr. Justice Willes, without deciding anything in particular, stated as a general proposition that a person employed by the candidate to canvass and get a vote was an agent for whom he must be to that extent responsible. As a general proposition, that would go a great way towards saying who is an agent, but I don't think we can take it as an absolute hard and fast rule on which we can say that wherever a case of corruption has been brought home to a person who was within this limit, the seat should be vacated. The effect of that would be to say that wherever there were volunteers who were acting at all, and whose voluntary acting was not repudiated by the candidate or his agents—wherever, in fact, a person came forward and said, 'I will act for you and endeavour to assist you,' and the candidate or his agent said, 'I am very much obliged to you, sir,'—any corrupt or improper act done by that volunteer, although unconnected with the member, would render the election void. To lay down such hard and fast rules as that would at times work great injustice. At present I cannot go further than to say that each case must be considered upon the whole facts taken together, and it must be determined in that way whether the relation between the person guilty of the corrupt practice and the member was such as to make the latter fairly responsible for it.

"In bringing that into consideration, the Judge who has to decide the case ought to bear in mind the reason of the rule already explained, viz., that the candidate must be responsible for his agent's unauthorised acts, if the agent was one who was put forward by him so that he might have the benefit of his foul play, or was one who was authorised by him to act in a way which

* Vide, ante, p. 3.

would give him, by receiving money which he might dispose of, uncontrolled agency. Bearing these matters in mind, I think the Judge must say in each case, what was the relation made out between the parties.

"I do not think it necessary that there should be any paid agency to make a candidate responsible for what the person has done. And I think that many of these volunteer agents who were heads of committees might or might not be so far connected with the Respondent that he would be responsible for them. But, upon the evidence in this case, I am satisfied that these heads of the committee-rooms were not parties offering this payment of wages. I do not think there was any sanction or consent given by anybody to the offer of Thornley and Vaughan. I have no doubt that both Thornley and Vaughan thought that Gilbert's claim to be paid his day's wages was so very equitable, according to their view, that probably the wages would be paid by the Respondent, and that being so, I think that they volunteered the statement, and that they carried it further, and positively assured Gilbert that he would be paid.

"But then comes the question, were Thornley and Vaughan so connected with the Respondent as to be agents for whose corrupt acts the Respondent would be responsible? As I have already intimated, it is necessary to consider the reasons and objects of the rule, and to take the case as it stands altogether. If I were to lay down the rule that such an act as this, an improper act of such persons, would avoid the election, I do not see that any one could be safe in ever standing at any election, without providing that every canvasser and every person engaged in the election should be his own dependent, over whom he would have complete control. I think there is a great risk in all cases that corruption would be concealed and hidden under things of that sort. Wherever it does appear that there is any ground to suspect that there is any corruption of that sort, I need not say that it would be a strong case; and whenever it appears that the things are numerously done, it would go very far to show that the agents did come within that principle upon which I think the law is founded, viz., that they were persons the benefit of whose foul play the member was to get, and therefore it would be right that he should forfeit his seat in

consequence. But in such a case as this, where I am convinced that they were real *bonâ fide* volunteers, voters acting for themselves, not selected by the member, or chosen by him at all, but really *bonâ fide,* in a business-like manner, the voters of the district choosing sober and respectable men, in whom they had confidence, to be the head of their own department, and acting together, a messenger who was sent by one of them is not so directly connected with the candidate, or any of his recognised agents, as to make him responsible for his misconduct in offering a bribe."

Upon one Cassidy being called as a witness,

Inquiry not to be stifled through insufficient particulars, but Respondent not to be taken by surprise. (1) 238.

Mr. *Leresche,* for the Respondent, objected to his being called to prove any specific case, on the ground that his name was not down in the particulars.

Mr. *Pope,* for the Petitioners, said that Mr. Baron Martin, at Bradford,* had decided not to impose any such restriction, but had allowed the cases to be as wide as possible.

Mr. Justice BLACKBURN said that all through these cases he had gone upon this principle, namely, that he should not allow any inquiry to be stifled as not being in the particulars; but at the same time he could not allow any Respondent to be taken by surprise without having fair warning. If, therefore, the Petitioners relied upon this evidence, and had not given notice of it, they must apply to amend the particulars, and give the other side reasonable time to meet the case.

Mr. Justice BLACKBURN, in his judgment, declared the Respondent duly elected.

What intimidation avoids an election.

Speaking of the evidence which had been given of intimidation, and intimating that it had failed to establish a case, he said:—

"In order to avoid an election on the ground of intimidation and undue influence, either it must be shown that the rioting or violence was instigated by the member or his agents for whom he is responsible, or it must be shown that it was to such an extent as to prevent the election being an entirely free election."

As to treating, he said, after citing 17 & 18 Vict. c. 102, s. 4:—

* Vide, ante, p. 38.

"That is the definition that the act gives, and on that definition I think there can be little doubt that the whole is governed by the word 'corruptly,' which means with the object and intention of doing that which the Act of Parliament intended not to be done for the object and purpose of influencing the election by the giving of meat and drink. The question whether or no there is 'corrupt' giving of meat and drink must, like every other question of intention, depend upon what was done, and, to a great extent, the extent to which it was done, the manner and way. And therefore it is a question which must always be more or less a question of fact."

Treating, to amount, must be corrupt, which is a question of intention.

Commenting upon the evidence of treating which had been given by the Petitioners, he said:—

"The effect of the story told by three of the Petitioners' witnesses was, that they went to the Star Inn; that they were to be kept out of the way of the other side; and that while they were there, one Rigby was brought there; that Rigby was taken upstairs into the committee or club-room, where business was going on; that he was introduced by one Higginbottom as being a Liberal Conservative or a Liberal, whom they were to keep from the other side; and in order to induce him to keep there they proceeded to make a mock meeting, at which they put him in the chair, and gave him drink, made him make a speech, and in short gave him drink to such an extent that he was taken and sent in a cab to the Albion; that Charles Johnson, the younger, who was the paid agent of the Respondent, was present at the time when that took place; that he approved of it, and told them to give him liquors and make him drink; that he would send a cab for him to take him away to the Albion, where they would take care of him and treat him; that at the Albion one Bates, the head chairman of the Respondent's committee, saw him; and when he had seen him, Bates came out, and at the door of the inn made a speech to what were called roughs, telling them that they were to bring in votes wherever they could get them anyhow, to strike the cabs, to knock the cab horses in the legs, and knock down the cab horses if they could not otherwise bring them in, and to bring them in anyhow; that there they were to be; that Rigby was there, and Rigby was made further drunk; and that two Irishmen

What, if proved, would be a case of treating.

who were not named, but were described, were brought in and made completely drunk, and put aside under the table; that Bates came in and must have seen them, and that they were pointed out to Charles Johnson as being two that were lying there, and that the red ticket that belonged to one of the Irishmen was shown in order to show that they had got an adversary whom, by giving the drink there, they had prevented from voting. If anything like this were true, it would clearly be a case of treating."

As to costs, he said:—

Costs.

"There is no reason why this case should be taken out of the general rule. I must consequently make the Petitioners pay the costs."

CASE XIII.

BOROUGH OF TAMWORTH.

BEFORE MR. JUSTICE WILLES, FEBRUARY 9, 1869.

Petitioners: Messrs. Hill and Walton.

Respondents: Sir Robert Peel, Bart., and Sir Henry Bulwer, Bart.

Counsel for Petitioners: Mr. Serjeant Ballantine; Mr. Henry James; Mr. Waddy; Mr. Wolferstan.

Agents: Messrs. Young, Maples and Co.

Counsel for Respondent Peel: Mr. Giffard, Q.C.; Mr. Macnamara.

Agents: Messrs. Freshfield.

Counsel for Respondent Bulwer; Mr. Keane, Q.C.; Mr. Charles Clark; Mr. Lumley Smith.

Agent: Mr. Keane.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

Evidence was given that 130 men, some of whom were voters, had been employed on the polling-day and the day previous at *5s.* a day, but it was not shown, first, that the employment of them was colourable; or secondly, that they were employed by the sanction of either of the candidates.

Some evidence was given both of general drunkenness and of corrupt treating; suspicious circumstances were shown, but no case was established on either ground.

The evidence as to bribery was unimportant.

At the commencement of the case,

Name mis-copied in particulars not to be altered. (1) 5.

Mr. *James*, for the Petitioners, stated that by some mis-copying the name of one Thomas Archer had been inserted in the list of bribed persons as John Archer. He asked the Court to permit the name to be altered, the Petitioners undertaking not to call him till the Respondents had had the same three days' notice as if his name had been correctly inserted in the list.

Mr. Justice WILLES said that he hardly felt disposed to allow the Petitioners to alter the name, there having been abundant time to prepare the particulars; but he presumed that probably the Respondents would not object to the case being brought forward.

Mr. *Macnamara*, for the Respondent Peel, said that he should prefer the case being gone into.

In the course of the case,

Person producing cheques when he must be sworn. (2) 376.

Upon the manager of a bank at Tamworth being asked by Mr. James (without having been previously sworn):—

Q. Do you produce certain cheques signed by Shaw, the agent of the two Respondents?—*A.* I do; how many do you want?

Q. As many as you have got.

Mr. Justice WILLES:—"You must proceed regularly. You ought to ask for each document separately."

Mr. *James*:—"We do not know the dates of the documents."

Mr. Justice WILLES:—"Then you must swear him."

He was then sworn.

Banker not bound to produce Respondents' agent's private account unless relevant. (3) 2.

Upon the manager of the Tamworth bank being asked, on behalf of the Petitioners, to produce the private account of Shaw, the agent of the Respondents, and objecting to do so,

Mr. Justice WILLES said:—"I do not think you are bound to produce Shaw's private account, except so far as to let me look at it. Then if it is material to the inquiry, I will say so, and in that case you will be bound to produce it, but not before. If there is any possible reason for its being produced, counsel shall see it."

Mr. Serjeant *Ballantine* submitted that he was entitled to call for the production of Mr. Shaw's private account with his bankers during the months of September, October, November, and Decem-

ber, and claimed a right to inspect it with a view of ascertaining whether there was anything in it which would assist the case of the Petitioners.

Mr. Justice WILLES said he must rule that this could not be done without laying some further foundation for such a course than at present existed, either by calling Mr. Shaw or otherwise.

Mr. *Giffard* then stated that Mr. Shaw had no objection to his private account being produced.

Questions which should be put to chairman of committee called to rebut treating. (4) 6.

A chairman of one of the Respondent Peel's local committees having been called for the Respondents to rebut the charge of treating in connection with the committee of which he was chairman,

Mr. Justice WILLES said:—"I have not yet heard this witness asked two questions which I think ought to be asked of all witnesses of this class, viz., whether he supplied drink himself, or knows or suspects any one else to have supplied drink either to the persons who were at the committee meetings, or generally to persons who came and wished to partake of it."

Respondents when called as witnesses may make any statement they like. (4) 338. (5) 114.

Upon the Respondent Bulwer being called as a witness, he was asked by his own counsel:—*Q.* "We have heard that you sent down a sum of money to a Mr. Taylor about ten days ago to satisfy certain claims, the amount being what you thought the right sum?"—*A.* "May I be allowed to state——"

Q. "I am afraid you must answer my questions."

Mr. Justice WILLES:—"The sitting Members ought to be allowed to make any statements they think proper."

Mayor should be made a respondent if there is intention to adduce evidence connecting him with corrupt practices. (5) 81.

Upon witness being asked questions, with a view of proving that the Mayor was implicated in the corrupt treating which it was sought to establish,

Mr. Justice WILLES said:—"The Mayor is no party to this petition."

Serjeant *Ballantine* (for the Petitioner) said:—"He is alleged to have been present during the treating."

Mr. Justice WILLES intimated that in his opinon the Mayor ought to have been made a party to the petition, if evidence was to be given to implicate him in any way. He would then have had an opportunity of defending himself.

Serjeant *Ballantine* said he should have no objection to call the Mayor as a witness.

Mr. Justice WILLES said:—"I will not call upon the Mayor, because I do not wish unnecessarily to put him in the position of a witness, as he is not charged in the petition."

Employment of private persons to keep the peace not illegal, but dangerous.

Employment of voters when illegal.

Agency by adoption.

What amounts to ratification.

It was proved that one Baraclough, an agent of the Respondent Bulwer, obtained leave of Shaw, an agent at that time of both the Respondents, to engage a few men, none of whom were to be voters, to help keep the peace on the polling-day. Baraclough greatly exceeded the authority thus given to him, and engaged as many as 130 men, twenty-nine of whom were voters, at ten shillings a head. After the election, Baraclough applied to one Carmichael to pay him on behalf of the Respondent Peel for these men, and thereupon the Respondent Peel, believing that some men had been actually employed in this way on his behalf, but without knowing any of the details, and without knowing that any voters had been employed, authorised Carmichael to pay them.

Serjeant *Ballantine*, for the Petitioners, contended, as regards the case against the Respondent Peel,—

First, that it was illegal to employ persons to assist in keeping the peace;

Second, that it was illegal to employ voters at all;

Third, that the Respondent Peel, by what he did, ratified the illegal act of Baraclough, and made him his agent by adoption.

Mr. Justice WILLES, in his judgment, said, as to the first point:—

"It is not illegal for private individuals to employ persons to keep the peace. It is a most dangerous practice, and one which ought rarely, if ever, to be resorted to. But although I say that it is not illegal, yet I feel bound to add that any one who presumes to appoint for himself a number of persons whom he calls private police is answerable, as their master, for the misconduct of any one of them."

As to the second point, that is, the employment of voters, a matter which more especially affected the case of the Respondent Bulwer, inasmuch as Baraclough was proved to be his agent, he said:—

"The law with respect to the employment of voters has been

discussed in a variety of cases which have come before Election Committees, and as this is the first case in which I have had to decide upon such a question, I think it right to refer to some of them by name. In the Leicester case (1 Power, Rodwell & Dew, 178) it was laid down that the colorable employment of voters under the pretence of giving them wages for services which were not rendered, is bribery, and that the colorable employment of voters for the purpose of inducing or enticing them to vote for the candidate who employs them, is bribery. On the same side of the question is the Oxford case (Wolferstan & Dew, 109), and the Hull case (Wolferstan & Bristowe, 87). On the other hand there are various cases in which the Committees came to the conclusion that the employment of voters was not colorable, in some because the services, though not rendered, were expected by the candidate or his agent to be rendered, and in others because the intention to bribe was negatived by the circumstance that service was contemplated by the candidate or his agent, and that it was only by reason of the misconduct of the voters employed that it was not rendered. The most remarkable of these cases is the Cambridge case (Wolferstan & Dew, 23, 41), where Mr. Deasy (now Mr. Baron Deasy) delivered a reasoned judgment. There is also the Lambeth case (Wolferstan & Dew, 129), where the Committee decided that the system of organised canvassing, which was proved to have existed at that election, accompanied by the payment of the canvassers, was, under the circumstances, legitimate, though payments were made to the voters who were employed in the course of the system. In the Preston case, too (Wolferstan & Bristowe, 76), the Committee declined to set aside the election on the ground that the system had been resorted to.

"Bearing in mind that the Parliamentary Elections Act, 1868, section 26, directs the Judge to act upon the principles upon which Election Committees have acted where he has no light from the rules which his own professional experience supplies him with, these cases may be taken to throw light upon the employment of these 130 men, so far as the number consisted of voters."

Proceeding to deal with the facts, and pointing out that the principle to be acted upon was represented by the question—"Is the employment of these 130 men a colorable device to cover

bribery? or is it to be referred to motives and springs of action other than an intention to procure votes?" he said:—

"The question to be inquired into here is why did Baraclough employ these 130 men? I believe that he employed them because he desired to gain popularity for himself, and because he desired to make a handle of their employment to gain favour for himself among the class to which the men belonged. I believe that he did it to make capital for himself, and that in doing so he acted unfaithfully to his employer. He did, in employing those men, what was not to the advantage of his employer, or of the Respondent Bulwer; on the contrary, what has rebounded in strong suspicion and some degree of discredit to the cause on the side of which those men were employed; and if I had arrived at the conclusion that the intention of employing those 130 men was to engage one voter to vote for the Respondent Bulwer, who would otherwise have voted for Mr. John Peel, I should have said that the election (at any rate, of the Respondent Bulwer) was void."

After analysing the rest of the evidence, he went on to say:—

"Upon the whole, however, I come to the conclusion that it was an unauthorised act, done by Baraclough for the purpose of obtaining popularity for himself, and that it was not either in respect of the question of law, or upon the established facts, an act which I can designate as having been bribery. It is an act which, so far as I judicially can, I reprehend and condemn, and if I thought it had been done by him with any view to advancing the interest of his employers,—so that I had to impute the intention to do that which was the natural consequence of the act,—I must have held this election to be void."

As to the third point, that is, the ratification by the Respondent Peel of the act of Baraclough, he said:—

"It is a broad principle of law that no man should be answerable for the act of another, except to the extent of the authority he has given him, or that he has allowed him to assume, or in respect to liabilities attached by the policy of the law to certain agencies in which it is thought well, for the benefit of the public, that the agent should be considered to represent his principal, whether he has actual authority from him or not, provided only he has an appointment as an agent. But the rule is plain that a ratifi-

cation after the act is equivalent to an authority given at the time. The rule is also plain as limited to the case in which the principal, the person sought to be made liable as principal, is acquainted with the character of the act at the time when he ratifies. The Respondent Peel in consenting that the men employed by Baraclough should be paid, and paid out of his money, did what would be a sufficient adoption of the act provided the Respondent Peel at the time was acquainted with the character of the act. Was he acquainted with the character of the act? I am satisfied he was not. The conclusion therefore is, that as the Respondent Peel was not acquainted with the illegality of the act of Baraclough, supposing it to have been illegal, at the time when he did the act which would, if he were so acquainted, have amounted to a ratification, his case does not fall within the rule of agency by adoption."

Mr. Justice WILLES in his judgment declared both the Respondents duly elected.

Law of agency illustrated.

With reference to the law of agency he said:—"It is a principle of substantive law that, for the preservation of the purity and freedom of elections, the member returned shall be answerable, not only for his own acts, but for the acts of his agents, whom he puts in his place to represent him in the conduct of the election. It is unnecessary, after the luminous discussions of that principle, and especially one that has lately appeared, by my Brother Blackburn,* to enlarge upon it. It will be sufficient to dismiss it with an illustration, an illustration, it is true, not involving the constitutional principle which makes the chief value of the rule, but which will at once show its good sense and its justice. If a race were to take place between two vessels for a prize, and the steersman aboard one of those vessels was to thwart his opponent by declining to give way to the vessel that had a right to keep her wind; or if one of the crew hoisted an extra sail not allowed by the rules of the race, and the vessel aboard which that foul play took place was to come in first, the owner could not claim the prize, even by showing that he was away, that he had nothing to do with the misconduct of his servants, or even that he forbade

* *Semble*, the Bewdley case, ante, p. 17.

them to be guilty of such misconduct; nor could he mend his position by showing that if no such misconduct had taken place his vessel would nevertheless have been sure to come in first."

Joint attention to the registration does not necessarily imply joint action throughout subsequent election, or joint liability.

As to the joint action of the two Respondents, and their consequent liability for the acts of each other's agents, he said:—

"It has been urged upon the Court that there was a joint action amounting to mutual agency on the part of the two Respondents. It is said that they proceeded jointly, and that they were jointly represented at the register. Everybody knows the importance of attending to the register, and of combining at the register the forces of those who represent one side in politics; and I have no doubt that both the Respondents anticipated the contest which was about to take place; that the Respondent Peel, wishing well to the Respondent Bulwer from the beginning, being satisfied with his coming forward, and desiring that he should be returned with him, but not at his expense, did unite with him in taking care that the register was properly framed and their interests attended to. That registration took place about September. September went by, and after that the two Respondents appear to have pursued different courses."

He concluded by saying that the Petitioners had failed to establish any such joint action between the two Respondents as would make them answerable for the acts of each other's agents.

Land agent not necessarily agent in election matters.

As to the liability of either of the Respondents for wrongful acts, alleged to have been done by one Carmichael, he said:—

"It was proved that Carmichael was the land agent of the Respondent Peel; he was forbidden to interfere in election matters at all, and he did not in fact interfere in election matters for the Respondent Peel; but it was alleged that he did interfere for the Respondent Bulwer, and that he did so with the Respondent Peel looking on, and therefore that he bound them both. Inasmuch as Carmichael was a land agent, and not an election agent for the Respondent Peel, and not an agent in any sense for the Respondent Bulwer, it is clear that the whole of the evidence introduced, with respect to Carmichael's alleged wrongful acts, was irrelevant."

As to treating, he said:—

"Treating to be corrupt must be treating under circumstances,

and in a manner that the person who treated used meat or drink with a corrupt mind, that is with a view to induce people, by the pampering of their appetites, to vote, or to abstain from voting; and in so doing, to act otherwise than they would have done without the inducement of meat or drink. It is not the law that eating and drinking are to cease during an election; eating and drinking by voters is specially provided for by the 23rd section of the Corrupt Practices Act, 1854, and that section forbids and makes it illegal to give meat or drink to voters upon the day of the nomination, or upon the day of the poll; to give meat or drink by way of refreshment, however moderate, to voters, on account of their having voted, or being about to vote; and even in the case of persons being about to vote, it imposes a penalty of 40*s.* only upon the person who so treats by way of fair refreshment. Now, nothing therefore can make it more obvious that the Legislature did not intend that every bit of bread or sup of drink given to a voter in the course of an election, should have the effect of defeating that election. If the Legislature meant so, it would have said so in the section to which I have referred. It has imposed a special penalty, and made such an act illegal, but it has not said such an act shall avoid the election. What the Legislature has said in the 4th section is that such an act, if done corruptly for the purpose of influencing the election, shall make the election void; and that by virtue of the 36th section of the statute, which classes together bribery, treating, and undue influence, the committing of either of them by the member or his agent shall void the election."

What is corrupt treating.

All treating not necessarily corrupt.

As to the way in which treating should be proved, he said:—

"I think it would be well that some course should be taken (of course it must be in conjunction with the other Judges, who have to deal with this subject) for the purpose of in some way marshalling the evidence of treating under the direction of the Court.

Marshalling the evidence of treating, when publicans should be called by Petitioners.

"At Guildford, where a series of local committees were appointed, and where a great deal of evidence was given to show that there was a great number of persons, some voters, some hangers-on, some parasites, who went round to drink wherever they could find drink, and supped out of others' pots, without

paying, I took the course of saying that the Petitioners, if they thought proper to charge acts of that kind as being evidence of treating by the sitting member or his agent, must give some evidence by calling the publicans, in order to show that the order was really given by one or other of such persons, and not call upon the Court to assume that a misdemeanour was necessarily committed from the mere fact of drink being supplied by the publican, and talk being supplied by the speaker. At Lichfield, acting upon that view, I plainly stated that the Petitioner had better call the publicans, and let us at once know whether they could give any evidence as to the people who had given orders for the drink; that course was pursued, and the result was that the whole truth was brought out during the Petitioner's case."

Principles applicable to all circumstantial evidence.

In the course of his review of the circumstantial evidence, which had been adduced in support of the charges in the petition, he took occasion to say as follows :—

"There are certain views, broad and sensible, which are applicable to this and to all cases of circumstantial evidence. There is one principle of the law of evidence which may be said to be universal, that of first ascertaining upon whom rests the burden of establishing the affirmative. You ought to judge of a case just as much by evidence which might have been produced if the affirmative were true, and which has not been produced, as by the evidence which has been laid before the Court. In other words, no amount of evidence ought to induce a judicial tribunal to act upon mere suspicion or to imagine the existence of evidence which might have been given by the Petitioner, but which he has not thought it to his interest actually to bring forward, and to act upon that evidence, and not upon the evidence which really has been brought forward. The second principle, which is more particularly applicable to circumstantial evidence, is this—that the circumstances to establish the affirmative of a proposition where circumstantial evidence is relied upon, must be all, such of them as are believed, circumstances consistent with the affirmative; and that there must be some one or more circumstance believed by the tribunal, if you are dealing with a criminal case, inconsistent with any rational theory of innocence, and when you are dealing with a civil case (otherwise expressed, though probably the result is for the most part the

same), proving the probability of the affirmative to be so much stronger than that of the negative, that a rational mind would adopt the affirmative in preference to the negative."

Effect on election of proof of general drunkenness.

As to the effect of general drunkenness, not traceable to the Respondent or his agent, he said :—

"If it had been established that there was throughout the borough, or any great part of it, general drunkenness (though it could not be traced to the Respondent or any agent of his), if it produced obvious demoralisation to an extent which must have influenced the election by producing the vote of one or more of the constituency in favour of the Respondent Bulwer, who would otherwise have voted for Mr. John Peel, I should have considered that a strong case had been made, to be rebutted on the part of the Respondent. General bribery unquestionably, from whatever quarter it comes, will vitiate an election, even without proving any such connection, probably because of the propriety of acting upon the presumption that it must have been from some person so interested in the member, or so connected with his agent, that it ought to be attributed to the one, or at least to the other. It has been said that the same law applies to general treating. I desire to abstain from giving any opinion upon that, because I observe that in the Lambeth case* the Committee, no doubt acting upon sound advice, stated that there was a distinction between bribery and treating; and Committees, notwithstanding they were empowered to, and generally did, go into evidence of bribery in the first instance without requiring evidence of agency to be given, appear lately to have insisted—no doubt with a view to the marshalling of the evidence—that agency should be proved first. When general drunkenness is resorted to on the part of the member, there is this distinction between it and bribery. You have people commonly brought up drunk to the poll: you have drunkenness continued up to the time at which it is likely to influence the vote of the man who is so vulgar-minded that he will sell himself for drink. If you make a man drunk to-day, the election being about to take place upon the 1st of March, it may or may not incline him in your favour. He may be your friend in his maudlin state, but when he comes to

* Wolferstan & Dew, p. 129.

his senses the next morning, and feels a huskiness in his throat, and has got rid, more or less, of his vice of yesterday, he would form a very mean opinion of the man who endeavoured to get him to vote upon the 1st of next month by making a hog of him on the 15th of this month. That is not so with bribery. You give the man the money; he has had the advantage of it; he has committed the odious offence, but he has at least the advantage of retaining and of spending for himself the wages of his iniquity. Drunkenness, in the way of general drunkenness with a view of influencing the election, according to my reading, would be drunkenness operating upon men at or near the time when you wanted them to come up to the poll to give you votes; and therefore to prove that the borough was generally made drunk in the first week in August, in order that people might be induced to vote upon the 17th of November, requires drawing a much more far-fetched conclusion than to say that each man got a 5*l.* note in the first week in August in order that he might vote on the 17th of November."

Gaps in Petitioner's case may be supplemented by Respondent's evidence.

Passing on to consider the evidence given as to certain specific acts of drinking, he said that although it appeared that the Petitioner's case failed in some respects, he had a further duty to perform with regard to it, which was to inspect narrowly the Respondent's case, in order to see whether it supplied those gaps which the Petitioner's case presented.

Object of treating women.

Dealing with the case of some women who had been treated by one Shaw, the Respondent's agent, he said the question was, Were they treated in order that they might influence their fathers, brothers, or sweethearts? If so, this would be unquestionably corrupt treating, and would avoid the election.

As to using of public-houses for canvassing purposes, he said :—

Organizing canvasses at public-houses a dangerous practice, for two reasons.

"This dangerous practice of organizing canvasses at public-houses was resorted to on the part of the Respondent Bulwer at eight places, and at some of these, if not at all, he incurred bills for rooms, though not for drink. When the time came for meetings to be held, he addressed the electors at those eight places. An organization existed here like that in the Lambeth case, which might shortly be described thus: Workmen's Committees were formed—respectable persons who could be relied upon and trusted to preside at those committees, and to set on foot a canvass of the

new voters (who were some of them working men in factories and some in foundries, some being engaged in agriculture) on behalf of the Respondent Bulwer; and I think it may be taken that at the committees which so met there was beer drunk, a part of which is represented in the amounts which were allowed under the terms of fair refreshment when the bills came to be paid upon the part of the Respondent Bulwer.

"Such an organization as this I call a dangerous practice, and for two reasons.

"First, because persons who are no voters at all, who have no interest in either party, and who only care to swig at other people's expense, wherever they think drink is going gratuitously, go round to such meetings, and are allowed to go in under the mistaken notion that they are voters on legitimate business with the committee, or out of good nature not liking to object to them. The candidate is thus exposed to a number of persons of that sort dropping in and drinking what they do not pay for, and then making a great show of it when the trial comes. If you could get ten people who went round to twenty-seven houses, at each of which ten meetings were held, you might get 2700 pieces of evidence, and if you could disarrange it and mix it up and down before the Judge, more or less, and he was too lazy or too little perspicuous to be able to reduce it to its natural order and to see exactly what it all means, you would run a very great chance of his concluding that extensive treating prevailed.

"The second reason is, because committee-men who are employed, and who it has been assumed may be supplied with refreshments, never ought to be. If committee-men are allowed to have drink it is sure to lead to excess. The committee-men are almost sure to bring, occasionally, a friend or two, and to introduce them under the same circumstances as the intruders and parasites to whom I referred as the first class of perilous people would have introduced themselves, and these again form a body of witnesses who greatly add to the mass of evidence out of which the judge has to extract the truth. There is also a third reason, and that is with regard to the landlords themselves. The landlord being called upon to lend his room for the purpose of

holding meetings there, and having, it may be implied, authority to provide fair refreshment to the committee during their labour (which could hardly have the name of treating affixed to it unless it were excessive), takes upon himself, without any orders at all, and upon the chance of being paid by the candidate if he should turn out to be successful, to allow a long score to be run up for other refreshments in addition to what he has been authorized to supply."

Costs.

As to costs, he said:—

"It only remains that I should dispose of the question of costs. I will not put it upon the counsel to make the application. With respect to the Respondent Peel, there is no difficulty. He has been returned for this borough by fair means, and by a majority which most unquestionably pronounces the opinion of the people in his favour. He would never have been petitioned against but for his alleged connection with the Respondent Bulwer. There was no such connection proved to the satisfaction of the Court. A personal attack was made upon him, which, upon the evidence, I am bound to say, has proved utterly groundless. I must order the Petitioners to pay the costs of the Respondent Peel.

"In respect to the Respondent Bulwer, I draw no distinction between him and the Respondent Peel personally. But it must be obvious that the question of the 130 men, and the question of treating, have given me very great anxiety. I think if the case against the Respondent Bulwer had turned only upon the question of treating, I might have pronounced the same conclusion as to him as I have already done as to the Respondent Peel; but I look with so much dislike upon the renewal of any system of private war or any semblance of it in this or any other country, I look upon it as so dangerous, so much to be deprecated, should it be threatened, and so much to be abolished and put down by the strong arm of the law should it arise, that I think the fact of the employment of the mob by Baraclough, though it does not in point of law affect the fate of the election as far as the Respondent Bulwer is concerned, ought in a matter which is to be disposed of by discretion, to induce me to abstain from ordering that the Petitioners should pay the costs of the Respondent Bulwer."

CASE XIV.

BOROUGH OF WESTMINSTER.

BEFORE MR. BARON MARTIN, FEBRUARY 19, 1869.

Petitioners: Beal and others.

Respondent: Mr. W. H. Smith.

Counsel for Petitioners: Mr. Fitzjames Stephen, Q.C.; Mr. Murch; Mr. Littler.

Agent: Mr. Cobb.

Counsel for Respondent: Mr. Hawkins, Q.C.; Mr. Serjeant Ballantine; Mr. Hugh Shield; Mr. D. Kingsford.

Agents: Messrs. Rogerson and Ford.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It was proved that considerable sums of money were spent on behalf of the Respondent in payments to certain shopkeepers for allowing boards containing the Respondent's bills and placards to be put up in their windows; and in order to show that this was done with the intention of corruptly influencing votes, evidence was given of the following suspicious circumstances:—

1. The enormous expenditure of the Respondent on the election generally, when compared with that of the other side.

2. The amount paid in respect of the boards themselves, coupled with the non-production of the vouchers relating to that amount.

3. The employment of a person named Edwards, who had been previously reported as guilty of bribery on a very large scale.

This evidence, however, was rebutted by that given by Mr. Grimston, the chairman of the Respondent's committee, who swore that no corrupt intention existed.

The evidence on the charge of bribery failed to establish a case.

In the course of the case,

Paying Voters to allow boards to stand outside their windows not necessarily a corrupt act.

It was proved that a number of shopkeepers allowed boards to stand outside their windows, on which were posted the Respondent's bills and placards. Some of these shopkeepers were paid in respect of these boards at the rate of 7*s.* per board per week; some of them, too, believed that it was intended thereby to influence their votes. The bills and vouchers for these payments were not produced; the whole amount of money paid in respect of these boards was 209*l.* Also, it was proved that one Edwards, who was employed to superintend this matter, was a person who up to 1851 was for many years employed in bribing electors at St. Albans.

Mr. *Hawkins*, for the Respondent, contended that it had not been proved that any votes were actually affected in consequence of the money paid on account of these boards.

Mr. Baron MARTIN said:—"That is not the real question. The question I have to try is whether there was an intention on the part of the Respondent's agents that the benefit to arise to voters from being paid to exhibit these boards should influence their votes or induce them to vote. The expressions used in the 17 & 18 Vict. c. 102, are 'in order to influence the vote,' and 'to induce the voter to vote,' and I ought to be satisfied that the payments were made in respect of these boards with that object."

Witnesses called for the Respondents, proved that all that was done in respect to these boards was done *bonâ fide*, and that there was no intention thereby to influence votes.

Mr. Baron MARTIN, in the course of his judgment, said as to this matter:—

"For me to decide that the Respondent is incapable of being elected by reason of these boards, I must be satisfied that when these boards were issued there was in the mind of the Respondent's agents the intention that the payment with regard to them was to be, not for the purpose of compensating the persons for exhibiting them, but to be a benefit given to those persons in order to induce their votes. That I am not satisfied of."

Giving refreshments to voters actually doing work on the polling day, not necessarily corrupt, but may be colourable.

It having been proved that voters were employed for the purposes of the election, and were supplied with refreshments by the Respondent on the polling day,—

Mr. Baron MARTIN said:—"If refreshments were given to men actually engaged in the purposes of the election, I do not regard it as treating under the Act. It must be corruptly done to make it treating, and I cannot think that giving food to persons doing work on the day of the election is a corrupt act."

Mr. *Stephen*, for the Petitioners, urged that it was illegal to employ voters.

Mr. Baron MARTIN:—"If you mean that it is colourable, it is another thing; but assuming that it was *bonâ fide*, and that nothing more than ordinary meals were supplied to persons actually engaged in the election, I do not think that it is within the provision of the Act."

Canvasser for independent association not agent.

It was proved that one Davis was a person who canvassed for a society called "The Working Man's Conservative Association." This society was assumed to be formed of working men, but next to nothing was subscribed to it by working men; all the rest of the funds of the society came from a subscription of 60*l.* from the Respondent himself (he withdrew from the society, however, on becoming a candidate), two subscriptions from his partner, and various other sums from persons who subscribed expecting the money to be expended in promoting their political views. The funds of this society were spent in canvassing persons to vote for the Respondent; but the evidence was that it was an independent agency, and that this body was acting on its own behalf.

Mr. Baron MARTIN, in his judgment, said that upon this statement of facts he should not hold Davis to be an agent.

Committee. What evidence of agency. (2) 390.

It was then proved that Davis's name was contained in a list headed "Westminster Election, 1868. Committee for promoting the election of W. H. Smith; Earl of Dalkeith, chairman," and containing about 600 names.

Mr. *Stephen* stated that he put this forward as one among several circumstances to show privity between Davis and the Respondent.

Mr. Baron MARTIN said that it might be an element in the case, but that it would be impossible to draw any conclusion from a list of that sort; in his view a committee meant a limited number of persons, in whom faith and confidence were placed by a candidate, and between whom there existed some privity.

Subsequently, in his judgment, he said, as to this:—

"I have said, and the other Judges have said, that bribing by one of his committee would affect the candidate; but by a 'committee' I meant a number of persons, comparatively few (of course, in a county that extends over a considerable district it would be larger), who were intrusted by the candidate with the work of carrying out his election, in whom he put faith and trust, and who, in fact, were his agents for the purpose of carrying it out; but I have never supposed, nor do I believe that either Mr. Justice Blackburn or Mr. Justice Willes ever considered, that where a number of people (600 or 700) choose to call themselves 'a committee' thereupon they become 'agents' of the candidate for the purpose of making him responsible for an illegal act done by one of them. I think it is a conclusion that could not be borne out by common sense. The committee-man whom I mean, and whom I would hold the Respondent to be responsible for, is a committee-man in the ordinary intelligible sense of the word, that is to say, a person in whom faith is put by the candidate, and for whose acts therefore he is responsible."

Queen's printer's copy of the Journals of the House of Commons not regular evidence of committal to Newgate of a person by the House of Commons. (1) 6.

Upon Mr. *Stephen*, for the Petitioners, proposing to put in two Queen's Printer's copies of the Journals of the House of Commons for 1851, as evidence of the committal of one Edwards to Newgate by the House of Commons,

Mr. *Hawkins*, for the Respondent, submitted that this could not be evidence at all.

Mr. Baron MARTIN :—"It had better be proved regularly."

Mr. *Stephen* further stated that he proposed to put in as evidence in this case a book containing a Queen's Printer's copy of the Report of the Commissioners appointed to inquire into the St. Alban's case.

Mr. *Hawkins* submitted that this evidence was not admissible.

Mr. *Stephen* said he could call a witness who saw Edwards at the bar of the House of Commons.

Mr. Baron MARTIN:—"You had better proceed with the evidence."

Canvassing book not evidence, *per se*, how to be used. (3) 49.

It appeared that canvassing books were kept by members of a certain independent association, formed to promote the Conservative cause in the borough, and that they were, when filled up, returned to the secretary of the association. He was called as a witness, and produced these books; and Mr. Stephen, for the Petitioners, said that he supposed they were evidence.

Mr. Baron MARTIN:—"They are not evidence at all; they are nothing but documents possessed by the witness: you may use them to examine him by, and the examination will then be evidence, but not the books."

Notice to produce "all documents relating to the matters in question." (5) 46.

Mr. *Stephen*, for the Petitioner, called for certain canvassing returns which he submitted he was entitled to ask for under the general words of the notice to produce "all documents, books, and papers whatsoever and in anywise relating to the matters in question in this case."

Mr. *Hawkins*, for the Respondent, objected to produce them.

Returns sent in to a committee on each day are separate documents. 5 (76).

Mr. Baron MARTIN:—"I hold that the notice covers every document which ought to be filed and ought to be returned."

Mr. *Hawkins*:—"What they are asking for is a quantity of sheets which are returns made by each particular canvasser to the particular committee, and by that committee sent to the central committee. There is no notice to produce them at all."

Mr. *Stephen*:—"They are papers relating to this matter, some of which have been put in."

Mr. Baron MARTIN:—"That is too general."

Mr. *Stephen*:—"We could not know the manner in which they conducted their election."

Mr. Baron MARTIN:—"That will not affect their producing them. Your being in ignorance of existing documents does not at all affect what the law requires a notice to produce to contain. They are bound to produce every document which ought to be delivered to the returning officer, because otherwise it is a neglect or omission to do what the law prescribes to be done."

Mr. *Stephen*:—"I submit we are entitled to the production of

other documents than those which ought to be filed. These returns are part of a series of election sheets, some of which they have used for the purpose of their own case; and I submit we are entitled to see the rest of them."

Mr. Baron MARTIN:—"You are not entitled to them at all."

Subsequently Mr. Stephen again called for these returns. He said they were all tied together, and one of them had been used by a witness to refresh his memory.

Mr. *Hawkins*, for the Respondents, objected to their being produced on the ground that they were all separate and distinct documents, and that they had merely been tied together for convenience: only one of them was in evidence.

Mr. Baron MARTIN:—"He has no right to make a general survey of them. The returns relating to each particular day are separate and distinct documents, and one of these returns relating to one particular day has been put into the hands of a witness to refresh his memory as to a particular vote marked in that return. It is as though six letters had been pinned together, and one only was referred to, that would give you no right to look at the other five."

Evidence admissible of number of promises made to canvassers.
(5) 272.

A witness, called by the Respondents, stated that he was employed on behalf of a canvassing association to take down, day by day, the returns by the canvassers employed by the association of the promises they obtained, and to enter them in a book. He was then asked,—

What were the total number of promises?

Mr. *Stephen*, for the Petitioner, objected to the question on the ground that it involved hearsay upon hearsay.

Mr. *Hawkins*, for the Respondent, submitted that the question might be asked, because if it turned out that the witness had been told that there was a large majority of promises for the Respondent, he would, as an agent for the conduct of the election, have been less likely to consider it necessary to resort to corrupt practices in order to carry the election.

Mr. Baron MARTIN:—"The inference is as remote as can be, but I cannot say it is not an inference."

A witness, on the subject of the boards, was asked,—

Had those boards, or the money you got for them, anything to do with your vote?

Corrupt notion in the mind of bribed person of no importance.

A. No.

Mr. Baron MARTIN said:—"The question is not what is the motive that operated upon the mind of the voter. The mind of the voter has nothing to do with it; the question is, the intention of the person who furnished the board. Probably there is no man who ever was bribed but would swear that the bribe had not influenced his vote." (6) 216.

Mr. Baron MARTIN, in his judgment, declared the Respondent duly elected.

In the course of his judgment, he said:—

First inquiry, *bona fides* of member.

"The first inquiry I have made in every case is whether it has been proved to my satisfaction that the candidate really and *bonâ fide* intended that the election should be conducted according to law."

As to the amount of expenditure, he said:—

Great expenditure *primâ facie* evidence as to intention against Respondent, but only expenditure known by him up to day of election to be taken into consideration.

"That which strikes most against the Respondent is the enormous expenditure. The expenditure of nearly £9000 upon an election is a thing almost incredible. But I think there is an observation which arises strongly in his favour. Up to the day of election the Respondent advanced only 4500*l.*; upon the day, therefore, when his seat was either secure or not he only knew of an expenditure of 4500*l.* The residue was paid afterwards, and in all probability he was very much surprised at being called upon to pay an additional sum of 4500*l.*; and I think he must be judged with regard to this matter upon an expenditure of 4500*l.*, and not upon an expenditure of 9000*l.*"

As to bribery, he said:—

Relation between candidate and agent more like that of master and servant than that of principal and agent.

"The law is a stringent law, a harsh law, a hard law; it makes a man responsible who has directly forbidden a thing to be done, when that thing is done by a subordinate agent. It is in point of fact making the relation between a candidate and his agent the relation of master and servant, and not the relation of principal and agent. But I think I am justified, when I am about to apply such a law, in requiring to be satisfied beyond all reason-

Proof of bribery by agent must be strong and cogent.

able doubt that the act of bribery was done, and that unless the proof is strong and cogent—I should say very strong and very cogent—it ought not to affect the seat of an honest and well-intentioned man by the act of a third person."

Candidate not responsible for his agent's son.

With regard to the son of one Hotton, an agent of the Respondent, he said:—

"His may be a strong case, but although young Hotton seems to have been active with regard to the election, I cannot hold that an act done by him because his father was a person for whom the Respondent would be responsible, would make young Hotton one also."

Mr. Baron MARTIN said, as to costs,—

Costs.

"Although my impression is that costs should follow the event, I certainly should not in this case give the entire of them, for, in my judgment, this case has lasted too long. If, in our joint judgments, Mr. Justice Willes, Mr. Justice Blackburn, and I, consider that we ought to be governed in giving costs by the consideration as to whether there was reasonable and probable ground for the petition, I should be inclined not to give costs, for I think there was reasonable and probable ground—indeed I think there was strong ground—for it."

Eventually it was decided that each party should pay their own costs.

CASE XV.

BOROUGH OF COVENTRY.

BEFORE MR. JUSTICE WILLES, FEBRUARY 20, 1869.

Petitioners: Berry and another.

Respondents: Messrs. Henry William Eaton and Alexander Staveley Hill.

Counsel for Petitioners: Mr. Henry James; Hon. E. Chandos Leigh.

Agent: Mr. T. H. Kirby.

Counsel for Respondents: Mr. Huddleston, Q.C.; Mr. Gates; Mr. Dugdale.

Agent: Mr. T. Dewes.

THE petition contained allegations of bribery and corrupt treating; and the fourth allegation was, that Alexander Staveley Hill did corruptly pay certain sums of money for and on account of procuring his election and return to Parliament; and also that Henry William Eaton did corruptly pay certain sums of money for and on account of procuring the election and return not of himself, but of the said Alexander Staveley Hill to Parliament.

In support of the fourth allegation in the petition, it was proved,—

That the Respondent Hill had unsuccessfully contested the borough in March, 1868, (the present petition arising out of the election in November of that year,) and that after paying the expenses of his contest he was called upon, after a certain period had gone by, to pay the further sum of £800, in respect of expenses, which had all the appearance of having been illegitimately incurred in the contest of March; but he considered

Corrupt payment of illegal expenses incurred at previous election comes within 17 & 18 Vict. c. 102, s. 2 (3).

Payment of one candidate's expenses by another candidate not illegal,

except it be to purchase influence.

himself bound in honour to pay them, and in July he did pay them. Up to that time he had had no communication whatever with the respondent Eaton, and he then intended not to offer himself again as a candidate.

Mr. Justice WILLES, in his judgment, said as to this :—

"The intention of the fourth allegation is to assail the return of the two Respondents upon the ground that there had been the payment of 800*l.* for expenses illegitimately incurred in respect of the election of March, for the purpose of stopping the mouths of those who claimed to have the 800*l.* due to them, and of influencing the election of November by so stopping their mouths. If that had been proved, I have no doubt, as a matter of law, that the payment of such a sum as that, by way of illegitimate expenses, to people who no doubt were voters of the borough, and had the means of influencing voters of the borough, with a view to stop their mouths, and to induce them either to assist the two Respondents, or, at any rate, not to oppose them because their unlawful claims had not been satisfied, would have made the election void. But that has not been proved; therefore, in this point of view, the petition has failed."

Upon this it was contended by Mr. *James*, for the Petitioners, that although the Petitioners had failed to prove the fourth allegation in the sense in which it had been originally taken, yet that evidence had come out in the course of the Respondents' own case, which sustained the averment in another and a different sense. It had been proved that in the middle of the October previous to the election, endeavours were made to induce the two Respondents to come forward together. At first the Respondent Hill expressed himself unwilling to come forward, and he did not consent to do so until the Respondent Eaton (in answer to a letter, requesting him to do so) wrote, and promised to bear all the expenses of the contest, both his own and also those of the Respondent Hill. The letter and the answer of the Respondent Eaton were as follows :—

"*October* 14*th*, 1868.

"MY DEAR SIR,

"I saw Hill last night, and promised I would call upon you to-day *vid* Coventry. I have a great deal to attend to, however, and could not get into the City. My object in seeing you

was to arrive at an understanding, which hereafter could admit of no doubt. Hill having left this in my hands, it would be false delicacy on my part to omit to ask you to let us have a letter from you clearly defining, no matter how briefly, the basis upon which we start. I take it to be as follows:—1st, That Hill under no eventuality is to pay anything but his own personal expenses; 2nd, That no matter what course the elections may take, you will bear him harmless in all election expenses; 3rd, That should any question arise during the contest as between you and him, it shall be referred to some mutual friend, named by yourself, whose decision shall be final; 4th, That you mutually agree to be loyal and true to each other. Nothing can be clearer than this, I think; and if you so understand it, then kindly write me a line to the effect. I will keep a copy of this letter, and will ask you to do the same. I shall be at the Dolphin, Southampton, for some days, so kindly address your reply there. I have had very satisfactory letters from Messrs. Lynes and Rotherham, who seem in great feather as to our success.

"I am faithfully yours,

"FREDERICK GRAY.

"H. W. EATON, ESQ., M.P."

"*October 15th*, 1868.

"MY DEAR SIR,

"In reply to your note dated yesterday, which has been forwarded to me here, I think there can be no possible misunderstanding between Mr. Hill and myself, as to the basis upon which he has consented to contest Coventry with myself. I think your statement of our understanding to be perfectly correct, and I accept it in all its particulars. As you suggest, I will keep your letter, which I consider binding.

"Believe me, yours very truly,

"HENRY W. EATON.

"FREDERICK GRAY, ESQ."

Upon this evidence Mr. *James* contended that by the treaty entered into between the two Respondents by the letters of October 14th and 15th, an agreement had in fact been come to

that the Respondent Eaton should bear the Respondent Hill's expenses if the Respondent Hill would consent, and on condition that he did consent, to coalesce with the Respondent Eaton, and to give the Respondent Eaton the benefit of his influence. This agreement, he submitted, was illegal within the meaning of the Corrupt Practices Prevention Act, 1854, s. 2 (3).

Mr. Justice WILLES, in his judgment, said as to this:—

"The question with which it is necessary to deal is, whether, in point of law, the treaty, as it has been called, entered into between the two Respondents by the letters of the 14th and 15th of October was a treaty which proved the fourth allegation of the petition, and which of itself amounts to that special sort of bribery which is provided against by the third paragraph of the second section of the Corrupt Practices Prevention Act, 1854. This is a question of much novelty and also of difficulty, involving as it does a question of fact as well as a question of law. Is that agreement in itself illegal, as a matter of law? It is insisted that it is in itself illegal, under the terms of the third clause of the second section of the 17 & 18 Vict. c. 102, by which it is enacted that "every person who shall directly or indirectly by himself or any other person on his behalf, make any gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in Parliament, shall be guilty of bribery." Therefore anything, great or small, which is given to procure a vote, would be a bribe, and if given to another to purchase his influence at the election, it unquestionably also would be a bribe and would avoid the election. It would be bribery in the case of the person who gave, as well as in the case of the person who received the benefit, and if the Respondent Eaton agreed to give the Respondent Hill 5*l.*, I might say a farthing in point of law,—if he agreed to give him anything, if only a peppercorn, for the purpose of purchasing any influence which the Respondent Hill had with the electors of Coventry, and of advancing the Respondent Eaton's interest as a candidate at the election. The question is, whether an agreement by one candidate to pay the expenses of another is or is not a bribe.

"Before dealing with the facts, I will conclude the statement of

the law. At the conclusion of the second section of 17 & 18 Vict. c. 102, there is a proviso which has a distinct bearing on the question: 'Provided always that the aforesaid enactment shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses, *bonâ fide* incurred at or concerning any election." Now it ought to be thoroughly understood that this proviso relates merely to the expenses of the candidate, and not to the expenses of any other person. It does not relate to the expenses of voters: to pay the expenses of voters on condition of their voting or abstaining from voting, is unquestionably bribery.

"But the candidate may pay his own expenses, and the candidate may, paying his own expenses, employ voters in a variety of ways; for instance, he may employ voters to take round advertising boards, to act as messengers as to the state of the poll, or to keep the polling-booths clear. He may also adopt the course which appears to have been adopted in this city—that is to say, the city or borough is divided into districts, and committees are formed amongst the voters themselves of selected persons, who go about and canvass certain portions of the district; and for their services these persons are sometimes paid and sometimes not paid. Now, unquestionably if the third clause of the second section was to be taken in its literal terms, the payment to canvassers, under such circumstances, being, as it is, a payment to induce them to procure votes by means of their canvass, would come within the terms of this clause, and would avoid the election.

"We have here, therefore, a test supplied of the meaning of the third clause of the second section, by means of which we see that it was not intended by this section to do away with every payment made by the candidate in the course of an election. And to come more nearly to the present case, it affords a test of whether this third clause was intended to prevent every payment to persons for assisting the candidate in obtaining the election. I shall not refer to any of the cases in which the question of the employment of voters has come before election committees: they are quite familiar to those who have paid any attention to the subject, and inasmuch as I have had occasion to cite them elsewhere* in judgments, which

* Vide ante, page 79.

are before the House of Commons, I do not think it is necessary to refer to them again.

"But with respect to canvassers employed to procure the votes of voters within the literal terms of the third clause of the second section, I must take leave to refer to the Lambeth case, which is reported in "Wolferstan and Dew's Reports," page 129; and is a case to which I attach considerable importance, because the matter then was very much considered under the chairmanship of Mr. Ingham, a gentleman of known good sense and of much legal experience; and it was held that the system (a system which was adopted in this city) of dividing the boroughs into wards and forming committees among the voters, and employing them to send out canvassers, was not objectionable, notwithstanding that there was a payment made to the canvassers for their services in canvassing. It is hardly necessary to point out how exceedingly dangerous the adoption of that system is, both in respect of the payment of canvassers, and also in respect of that which has been held lawful, viz., the supply of fair refreshment to unpaid canvassers whilst engaged actually, and not colourably, upon work, and, in like manner, of refreshments to committee-men. It is proper, whenever this system is referred to as not being unlawful in itself, to say that it exposes Members to very great danger, and that when it is merely colourable it would avoid the election. I refer to these cases to show that it is not every payment for the purpose of procuring a vote that can be held to be within the third clause of the second section. I do not treat the case of canvassers as presenting any close analogy to the case of a colleague in a contest for a city. Of course even the most distant comparison would be a comparison of great things with small, but it is necessary first to ascertain whether this third clause is to be taken in its literal sense, and if not, to determine what is its proper application to the case in hand. Its proper application to the case in hand, as it appears to me, is this, that the payment to be made under the third section must be a payment for the purchase of influence; a payment to some person who has influence in a place in order to purchase that influence: it must be a payment or gift, or loan of something valuable, to him in consideration of his lending his influence or his countenance in the election. As it appears to me, it is not an offence within the third

clause for a candidate to bring forward another person to stand as his colleague, he himself being a monied man and a party man, a man who does not care to spare his money in the interest of his party, who desires to have some person to stand with him in order to advance the interest of his party, and who is satisfied to pay the legitimate expenses of the election of himself and of the other candidate, whom he desires to bring forward with such a view. You must show an intention to do that which is against the law before you bring the case within any of those highly penal clauses of the 17 & 18 Vict. c. 102. Therefore, forming the best judgment I can, I must pronounce my opinion as I entertain it, that to bring forward another candidate under such circumstances, without a view to purchase his influence, with the intention of serving a man's party, and because he does not mind spending his money upon the legitimate expenses of the election of himself and of the other candidate, with the view only to serve his party, and not with the view to purchase influence for himself, does not fall within that third clause of the 17 & 18 Vict. c. 102, s. 2.

"Having thus endeavoured to give my opinion upon the law, it only remains to deal with the facts. The question of fact to be decided is, whether the treaty which was entered into in October between the two Respondents was a treaty having for its object the purchase of the Respondent Hill's influence in the city, because if it was, I agree with Mr. James that the expression 'legal expenses *bonâ fide* incurred at or concerning the election,' as used in the proviso to the second section, would not include the expenses of another candidate at that election, if they were paid for the purpose of purchasing influence. The inquiry to be made is this—Was it a purchase of the Respondent Hill's influence? Was it a purchase for the Respondent Eaton's individual advantage in the contest? Was the agreement entered into by the Respondent Eaton with the selfish view of aiding himself by that influence, or was what he did fairly to be explained by a desire to serve his party, without regard to any influence of Mr. Hill? Taking all the circumstances of the case into consideration, these questions ought, as it appears to me, to be answered in favour of the purity of intention of Mr. Eaton.

"I will conclude this part of the case by saying that I express no opinion whatsoever upon the propriety of such an arrangement

as was in this case made between the two candidates. It must be quite obvious to anybody who will cast his mind back upon the history of parliament that many persons of brilliant abilities, and who have been of very great service to the country, have been unable to pay their own expenses, and have been brought in at the expense of others; and that is so notorious that it confirms the opinion that I form upon the true construction of this third clause of the second section of the 17 & 18 Vict. c. 102, taken by itself. Therefore I come to the conclusion that the fair payment of the expenses of a member if he will stand does not of itself constitute an illegality under the provisions of this Act."

In the course of the case:—

Telegrams not privileged and must be produced if called for.
40.

A telegraph clerk who had been subpœnaed to produce certain telegrams said, in answer to the question whether he produced them, "I have them with me, but I have instructions from the secretary of the Telegraph Company not to let them leave my hands unless authorised by the court."

Mr. Justice WILLES said the secretary had no such power. Telegraph companies were clearly not privileged.

The witness having asked if the judge authorised him to hand over the papers to counsel,—

Mr. Justice WILLES said he was bound by law to produce them. They were then handed to counsel.

Adverse witness who may be cross-examined may also be contradicted.
41.

A witness, Parker, called for Petitioners, having denied that a certain conversation took place between him and one Smith, Mr. *James*, for the Petitioners, proposed to ask another witness questions with reference to the conversation he had overheard between Parker and Smith, in order to contradict Parker's evidence.

Upon an objection being taken to this,

Mr. Justice WILLES ruled that the questions might be put, and stated that the rule was that where you have an adverse witness you may cross-examine him, and where you may cross-examine him you may contradict.

If case not down in particulars,

A witness, Eliza Hayward, was called for the Petitioners for the purpose of proving that her husband had been bribed.

Mr. *Huddleston*, for the Respondents, objected to her being examined, on the ground that this case was not correctly and specifically mentioned in the particulars.

evidence as to it not inadmissible, but time to be given for inquiry.

Mr. Justice WILLES directed that the name of the person, the number on the register, and the place, be given to Respondent's counsel, and meanwhile the rest of the case to be proceeded with so as to allow Respondents time to make inquiries; he could not refuse to accept the evidence. 67.

Evidence having been given as to an attempt to induce a man to personate an absent voter,

Instigation by agent of Respondent to personate voters sufficient fraud to avoid election.

Mr. Justice WILLES remarked that it might in his opinion be laid in the petition that an agent of the member had got voters personated, and that that, if established, would be sufficient fraud at common law to set aside the election.

It having been proved that a message was sent to a voter by an agent of the Respondents in these words, "Come by the first train to Stag, Bishop Street," Mr. Justice WILLES said as to this in his judgment:—

Legal construction of message to come and vote.

"The question is, what is the legal construction of this document, 'Come by the first train to Stag, Bishop Street'? Does it amount to an act or inducement, affording evidence of a contract, which in the case of *Cooper* v. *Slade* was held to amount to bribery? I may dismiss this by referring to the opinion of my brother Bramwell in the House of Lords, in the case of *Cooper* v. *Slade* (p. 765). He there gave the opinion that even in that case, where the terms were 'Your expenses will be paid,' those words added by a person in the committee-room of the Member were not, under the circumstances, sufficient evidence of such a conditional promise. However, his opinion upon that point, which was one rather of evidence than of law, did not prevail; but he pointed out in the clearest terms that no amount of hopes or expectation on the part of a voter is enough to constitute bribery, and every one agreed that a mere request to a voter to come up and vote could not constitute bribery. It is quite clear that it cannot as a matter of law, because if I were to ask one of the learned counsel to go to London and vote for me at a club or elsewhere where an election

was to take place, and say, 'Come by first train" to whatever club it may happen to be, although looking to the fact that an election was about to take place, there could be no doubt that I meant that he should come and vote for me at some expense. I think that it would be not only without authority, but that it would be contrary to the authority to be found in the opinions of all the learned Judges who dealt with the case of *Cooper* v. *Slade*, to say that a contract to pay the expenses was implied. If I send to a coal merchant and say, 'Send me so many tons of coals,' of course it means, 'I will pay you for your coals;' but if I write to a man to do a thing to which a price is not usually attached, and for which the law says there shall not be a price paid, I think that the implication of condition would be contrary to the principle, and also to the authority of that case of *Cooper* v. *Slade*."

Mr. Justice WILLES in his judgment declared the Respondent duly elected.

Eating and drinking in connexion with politics, e. g., to celebrate a registration triumph, not necessarily corrupt treating.

As to certain evidence of treating given in the case, and the reason why it was not sufficient to establish a case, he said :—

"The treating which has been proved here has been treating of a sort quite consistent with a total absence of corrupt or unfair design on the part either of the Members or of any person who represented them. As an instance, may be taken that supper, at which, although the meat was supplied by an agent of the Respondents, and the drink was paid for by contributions amongst those who were present, some giving more and some less, it turned out to be a supper some time before the election, having reference to it no doubt, but only because it was a supper held in celebration of the efforts of the Tory party at the registration; it was a supper at which Tories supped, and it was a supper at which Tories paid. It was a banquet, or entertainment, in pursuance of the old habit of the race to meet and feast over any occasion upon which a labour in which they have been engaged has been brought to what they consider a successful end. Eating and drinking must go on, notwithstanding an election coming, in the ordinary and usual course. When eating and drinking takes the form of enticing people for the purpose of inducing them to change their minds, and to vote for the party to which they do not belong, then it

becomes corrupt, and is forbidden by the statute. Until that arrives the mere fact of eating and drinking, even with the connection which the supper had with politics, is not sufficient to make out corrupt treating."

Bribery.

On the subject of bribery, he said :—

Rule of constitutional law that candidates should be responsible for acts of agents.

"With respect to bribery, as well as with respect to treating, I shall ever hold it to be a wise and beneficial rule of constitutional law, quite apart from the 17 & 18 Vict. c. 102, that for the purpose of securing purity and freedom of election, candidates should be answerable for the acts of their agents, as well as for their own acts, and that a person can no more claim to be a Member of Parliament for a place as the result of an election in which his agent has been guilty of bribery, than a person can fairly claim a prize if the person whom he employs to ride his horse or to steer his vessel has been guilty of foul play in the course of his employment."

Offers to bribe as bad as actual bribery.

With regard to mere offers to bribe, he said :—

"Although these cases have been classed below those of bribery by both the learned counsel, it cannot be supposed that an offer to bribe is not as bad as the actual payment of money. It is a legal offence, although these cases have been spoken of as being an inferior class by reason of the difficulty of proof, from the possibility of people being mistaken in their accounts of conversations in which offers were made; whereas there can be no mistake as to the actual payment of money."

What cases as to non-residence may be gone into by the election judge. 6 Vict. c. 18, ss. 79, 98.

As to the effect of 6 Vict. c. 18, s. 98, in preventing the election Judge from going into cases of non-residence, he said :—

"The 6 Vict. c. 18, s. 98, enacts that the Committee (now the Election Judge) may inquire into and decide upon cases of persons who have been objected to before the Revising Barrister, and as to whom he has pronounced an express decision; if no objection has been taken, and he has pronounced no express decision, the Committee, or the Judge sitting here, cannot even on a scrutiny go into the question of qualification. But if an objection could not have been made before the Revising Barrister, then in respect of such an objection arising afterwards it appears to me that it comes clearly within the expression 'legal incapacity at the time of his voting,' which may be inquired into by an Election Com-

mittee, or now by a Judge. And such was the decision in the Cambridge case, reported in 'Wolferstan and Dew,' page 45. It is proper, however, to mention that the very same Committee, singularly enough, at page 50, appears to have had before them the case of a person who had not resided during the six months ending upon the 31st of July; and with respect to such a person, inasmuch as the Committee said an objection might have been taken before the Barrister, and was not taken, they declined to go into the case of his not being resident after the 31st of July, upon a ground which seems to me, I own, of a good deal of subtlety, namely, that there was no cessation of residence after the 31st of July, but that the cessation of residence was at a period at which it might have been inquired into by the Revising Barrister. As to the decision in the Cambridge case, I cannot myself, looking at the 79th section, say, if I were to put my own construction upon it, I should not have come to the same conclusion—I think I should."

The law as to persons who vote when not entitled to do so.

2 Will. 4, c. 45, ss. 27, 32.

Duty of Revising Barrister.

With regard to the law as to persons who vote when not entitled to do so, he said:—

"It is provided by the 2 Will. 4, c. 45, ss. 27 and 32, that in order to be placed upon the register a person must have been resident upon the last day of July and for six months preceding. Then there are subsequent enactments (especially 6 Vict. c. 18) by which provision is made for lists to be framed of persons so entitled to vote, and by which those lists are to be revised by competent persons with reference to the qualification, including that of residence during the six months ending on the last day of July in each year. The duty of the person who revises is fully satisfied by inquiring as to the right up to the last day in July, and with reference to the continuance of the right after the last day in July it is enacted by 6 Vict. c. 18, s. 79, that no person shall be entitled to vote at any future election for a Member unless he shall, ever since the 31st of July in the year in which his name was inserted in the register, have resided and at the time of voting shall continue to reside within the city,' &c.; therefore it is clear that with respect to persons who have ceased to reside after the 31st of July, they are not entitled to vote at the election. I have stated elsewhere* my opinion with reference to such a person

* Vide ante, page 14.

voting, and I repeat it (my opinion has not yet been pronounced with reference to any other case within the 79th section), that a man who ceases to reside, and has gone off and taken up his residence elsewhere, leaving behind him no wife or household gods in the city for which he intends to return—who cannot fairly be said to retain a residence in the city, but has entirely removed his residence elsewhere beyond the city, and the statutory seven miles which are considered as part of it for the purpose of residence,—I say that that person, knowing the law and coming here to vote, even if there were no remedy—which I think there is in the event of his doing that which by law he is not entitled to do—has done an act which is unjustifiable in point of fairness and honesty. If he does not know the law, or if he is in doubt about the fact, I should say nothing about his honesty; but if he does know the law, and does know the fact, I say that that man, in voting, does an act which cannot be maintained in point of honesty, as it certainly cannot in point of law."

Travelling expenses of non-resident voters entitled to vote. Cooper v. Slade, 21 & 22 Vict. c. 89, s. 1; Representation of the People Act, 1867, s. 36.

On the question of the payment of the travelling expenses of non-resident voters who are entitled to vote, he said:—

"The law may be shortly stated thus: Before the case of *Cooper* v. *Slade* (6 House of Lords Cases, 746), which was decided in the year 1858, a doubt existed as to whether, under the law as it stood, the travelling expenses of out-voters might be paid. I speak now of out-voters who have a right to vote by reason of their residence continuing, and whether the promise to an out-voter to pay him if he came up and gave his vote for a particular Member, or to pay him his expenses of going back to his place of residence, if he happened to be in the place of polling, in order that he should not vote,—whether the payment of expenses in any form,—whether in the former, which has been called a mild form of bribery, or in the latter, which would be a point-blank piece of bribery,—was illegal, and illegal by reason of its being a promise of money within the first clause of the second section of the 17 & 18 Vict. c. 102, a promise to give money 'in order to induce any voter or voters to vote or to refrain from voting;' and the result was that it was decided in that case of *Cooper* v. *Slade* that a promise to a voter, whether he be really entitled to vote or not, who happens to be out of the place at the time of the election,—a promise to pay

even his bare expenses if he will come up and vote for a particular candidate, is illegal. That led to a discussion as to whether or not it was just that a candidate should be debarred from the payment of the bare travelling expenses of the voters, and it was insisted that there was nothing unjust in it; that the voter ought to be enabled to vote, and as he gained nothing by his travelling expenses, they ought to be allowed to be promised him, and paid him. That was answered by an argument which has prevailed and which expresses the law,—that the danger of allowing promises or payments of travelling expenses to voters being made a colour and cloak, and of paying them more than they are entitled to in respect of such travelling expenses, is so great, that they shall and they do continue to be forbidden by the law. Accordingly, in the August of the year in which the decision in *Cooper* v. *Slade* was given, it was enacted by the Legislature in the first section of the 21 & 22 Vict. c. 87 (which must be taken as distinctly recognizing the decision in the case of *Cooper* v. *Slade*), 'that it shall be lawful for any candidate or his agent to provide conveyance for any voter for the purpose of polling at an election, and not otherwise, but it shall not be lawful to pay any money, or give any valuable consideration to a voter for or in respect of his travelling expenses for such purpose.' Therefore it is lawful, under that Act, for the candidate to give a voter a lift in his carriage to the poll, but it is not lawful for the candidate or his agent to promise a voter his travelling expenses if he will come up and poll, or to pay his expenses afterwards, if that payment is made corruptly, within the provisions of the 17 & 18 Vict. c. 102, as to payments after the vote in respect of having voted. So stood the case until the passing of the Representation of the People Act of 1867, which, by the 36th section, enacts that it shall not be lawful for any candidate or any one on his behalf, at any election for any borough, 'to pay any money on account of the conveyance of any voter to the poll, either to the voter himself or to any other person; and if any such candidate, or any person on his behalf, shall pay any money on account of such conveyance,' then the payment is to be considered illegal; not that the payment is to be considered to avoid the election, if made to a third person not a voter, and not to induce a voter to vote,—though such a consequence would follow if the promise were made

to a voter,—but that it shall be unlawful to pay any money on account of conveyance, either to the voter or any other person."

As to costs, he said:— Costs.

"The question which remains is that of costs. As a rule, costs ought to follow the event; and in ordinary actions they almost invariably follow it, the exceptions being rare. I did intend to deal with these cases as if they were ordinary suits between party and party. I have, however, become deeply impressed with the feeling that there is a third party, no less interested than those who are immediately engaged in the petition, and that I ought in each case to consider, not merely whether the petition has failed or has succeeded, but whether upon the whole I think there are grounds, not founded merely upon the truthfulness of witnesses, but founded upon the very character and history of the transaction upon which it was for the public benefit that the petition should be presented, and upon which I think that the Petitioners have had reasonable and probable cause for instituting the inquiry. I shall say no more upon that point unless it is desired that I should do so. I think this is a case in which a petition has been most reasonably presented and prosecuted; and therefore I say nothing about the costs, although the petition has in the end, in my mind, altogether failed of arriving at the result of unseating the Members."

CASE XVI.

BOROUGH OF BRIDGEWATER.

BEFORE MR. JUSTICE BLACKBURN, FEBRUARY 23, 1869.

Petitioners: Messrs. Henry Westropp and Charles William Gray.

Respondents: Messrs. Alexander William Kinglake and Philip Vanderbyl.

Counsel for the Petitioners: Mr. Serjeant Parry; Mr. Collins.

Agent: Mr. Trevor.

Counsel for the Respondent, Kinglake: Mr. Henry James.

Agent: Mr. Lovibond.

Counsel for Respondent, Vanderbyl: Mr. Serjeant Sargood; Mr. Edlin.

Agents: Messrs. Reed and Cooke.

THE following report was made as to this case:—

"There is reason to believe that bribery extensively prevailed at the election. The reasons for coming to this conclusion are, that it appeared that statements had been made that if any money was paid to any voters on behalf of the Respondents, the same sum should be paid to all who voted for them. The inquiry was stopped from its being admitted that agency was established with respect to Henry Chapman Bussell; so that it was not ascertained how far these statements were made by agents for whom the Members were responsible, but it was sufficiently proved that an expectation existed among the voters that these promises would be fulfilled. That a large number of voters abstained from voting till past one o'clock, about which time Bussell was proved to have bribed three persons, and there was strong reason to suspect (though it was not proved) that he bribed others, and that voters were also bribed by one Andrew Allan; but both Bussell and Allan having gone away, they

could not be examined as witnesses. Before the proved and suspected giving of bribes the Respondents were in a great minority, but after one o'clock they immediately began to poll many votes, and were placed in a majority. There is reason, therefore, to believe that many of those who voted for them after one o'clock were induced to do so either by money actually paid to them, or by the expectation of receiving a sum similar to that paid to others."

At the commencement of the case,

Mr. Serjeant *Parry*, for the Petitioners, put in the following canvassing card:—"*Bridgewater Election.*—The honour of your vote and interest is respectfully solicited on behalf of Mr. Kinglake and Mr. Vanderbyl, the Liberal candidates."

Joint candidature. Effect of agency. 2.

He also stated that in the accounts it appeared that joint bills were sent in to the candidates, and that joint payments were made on their behalf.

Mr. Justice BLACKBURN:—"I suppose it can hardly be disputed that the two candidates stood jointly and canvassed jointly."

Serjeant *Sargood* (for the Respondent Vanderbyl):—"I think we must admit that."

Mr. *James* (for the Respondent Kinglake):—"I cannot make that admission with respect to the act of every gentleman."

Mr. Justice BLACKBURN:—"No; they stood jointly, and canvassed jointly. What effect that would have upon making the agents of one the agents of the other I will consider afterwards, when I hear all the evidence."

In the course of the case,

Eliza Circler, a witness for the Petitioners, proved that her husband gave her 10*l.* on the day of the election.

Statement of voter as to where and for what he received money. 16.

Serjeant *Parry*:—"Did you ask him anything about it?"

Witness:—"I asked him where he got it."

Mr. *H. James*, for the Respondent Kinglake, objected to this.

Mr. Justice BLACKBURN ruled that it was admissible.

Mr. Serjeant *Parry*:—"Did he or did he not tell you?"

Witness:—"Yes."

Mr. Serjeant *Parry* :—"What did he say to you?"

Witness :—"He told me Bussell gave it to him to vote for the Respondents."

Evidence to contradict hostile witness. 27.

John Vearncombe having been called on the part of the Petitioners to prove that he had been bribed, denied it.

Mr. Serjeant *Parry*, for the Petitioners, said he proposed to call two witnesses, Hordwood and Denman, to prove what this witness said to them, submitting that the witness was a man who, as the Petitioners alleged, had been bribed, but upon whose evidence they could not rely, and who was, therefore, in the same position as a witness called by the Respondents to prove that he was not bribed.

Mr. Justice BLACKBURN said he thought Serjeant Parry could not call Hordwood and Denman for the purpose indicated by him.

Evidence of what had been said after the poll was closed, inadmissible. 41.

Robert Blackmore, examined on the part of the Petitioners, was asked what one Buttle had said to him on the evening of the poll day.

Mr. *H. James* objected to evidence being given as to a conversation which took place after the poll.

The objection was allowed.

Statements with respect to payments for beer. 62.

William Marels was asked, on the part of the Petitioners, what the landlady of the Bath Bridge Inn had said to him about payment for some beer which had been ordered of her by James Hunt.

Mr. Justice BLACKBURN said that anything done or said between the landlady and the people ordering the beer was evidence, but not what the landlady had told the witness about it. That would have to be proved by the landlady herself.

Telegraphic messages bearing on the election to be produced. 90.

Mr. Edward Gregory, chief clerk in the manager's department of the United Kingdom Telegraph Company, being asked by Serjeant *Parry*, for the Petitioners, "In answer to a subpœna, do you produce certain telegraphic messages you received on or about the time of the last election here?" said, "My instructions are only to produce those telegraphic messages on the express order of his Lordship."

Mr. Justice BLACKBURN said :—"They must be produced, but only those that bear upon the election."

Before the termination of the Petitioner's case,

Mr. Serjeant *Sargood*, on behalf of the Respondent Vanderbyl, said that he felt that it would be useless any longer to contest the petition, but that he should now merely ask permission to ask the Respondent Vanderbyl to prove that he was in no way personally implicated in the corrupt practices which had been proved to exist.

Mr. *James* then made a similar statement on behalf of the Respondent Kinglake.

The Respondents were then called to vindicate their own character, and were not cross-examined.

Mr. Justice BLACKBURN then gave judgment, declaring the Respondent unseated.

Speaking with reference to the law of bribery, he said :—

What bribery will affect an election.

"I believe the law to be, though I do not think it has been distinctly settled, that if the bribery or corruption was to such an extensive degree (though it was not shown to be in any way connected with the agents or persons belonging to the members) as to show that it was not a fair and open election, but a corrupt election; or if it was shown that corrupt practices of any sort, however small, were committed by an agent of the sitting member, the seat is vacated; and it has been established that it is not at all necessary and essential that the agent should have been acting with the knowledge or consent, or with the request of the member: if he abuses his authority, and commits corruption, it equally vacates the seat, as if the corrupt practice had been committed by the express direction and authority of the member."

On the question of agency, he said :—

What evidence necessary to establish agency never yet precisely defined.

"It has never yet been distinctly and precisely defined what degree of evidence is required to establish such a relation between the sitting member and the person guilty of corruption, as should constitute agency. I do not pretend to be able to define it, certainly: no one yet has been able to go further than to say, as to some cases, enough has been established; as to other, enough has not been established to vacate the seat; this case is on the right

side of the line, that is on the wrong; but the line itself has never yet been definitely drawn, and I profess myself unable accurately to draw it."

Costs.

Mr. Justice BLACKBURN said:—"I need hardly say, that in a case like this, where the Petitioners have succeeded, the ordinary rule is that the Petitioners have costs; and as there is no reason to depart from the ordinary rule, the Petitioners must have costs."

CASE XVII.

BOROUGH OF BODMIN.

BEFORE MR. JUSTICE WILLES, FEBRUARY 22, 1869.

Petitioners: Adams and others.

Respondent: Hon. E. F. Leveson Gower.

Counsel for Petitioners: Mr. Rodwell, Q.C.; Mr. R. Harris; Mr. G. C. Alexander.

Agents: Messrs. Holmes and Co.

Counsel for Respondent: Mr. Serjeant Ballantine; Mr. Bowen.

Agent: Mr. Murton.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

The principal charge relied on by the Petitioners was one of corrupt treating against one Grose, who was an agent of the Respondent. Upon the evidence adduced the Judge declared that he was not satisfied of the existence of corrupt intention.

All persons affected by corrupt practices must be mentioned in particulars. (2) 1.

Mr. *Rodwell*, Q.C., in opening the Petitioner's case, said that he intended to call evidence to prove that one Bray had offered money to two men, Langdon and May, to induce them to refrain from voting.

Mr. Serjeant *Ballantine*, for the Respondent, objected to this case being gone into, on the ground that the names of Langdon and May were not in the list furnished by the Petitioners in pursuance of the order for particulars.

Subsequently Mr. *Rodwell* submitted that, inasmuch as Langdon

and May had not accepted the money offered to them, they did not come under the operation of the order for particulars, and that he was, therefore, entitled to go into the case.

Mr. Justice WILLES said that he should not allow the case to be gone into without a special application was made on the subject.

Mr. *Rodwell* then stated that there was another case not specifically mentioned in the list; this was a case of an offer of a bribe to a relation and friend of a voter, in order to influence that voter's vote. He submitted that it was never necessary to give the name of a briber under an order for particulars, *d fortiori*, therefore, it was unnecessary to give the name of a person merely offering a bribe.

Mr. Justice WILLES, after looking at the directions contained in the Corrupt Practices Prevention Act, 1854, and the rules framed in pursuance of the Parliamentary Elections Act, 1865, said that it was obvious that the intention was that every person affected by the corrupt practices should be mentioned in the particulars.

Evidence of what was said by Respondent's agent after the election is over not admissible. (2) 137.

Mrs. Mary Short, the wife of a voter, was called for the Petitioner, and stated, in the course of her evidence, that one Collins, an agent of the Respondent, had come to her shortly before the election and said, "If your husband does not vote for the Respondent, it will be worse for you in the winter." She went on to say that Collins had come to her again on the Sunday before the present inquiry, and had said something. She was then asked, "What did he say to you last Sunday when he came?"

Mr. Justice WILLES said that he did not think the question admissible.

Mr. *Rodwell*, for the Petitioner, submitted that he was entitled to ask it, on the ground that the conversation was part of a proceeding which was being inquired into as a whole.

Mr. Justice WILLES:—"I am of opinion the question cannot be put. A man is bound by the admissions of his attorney made in the course of the cause, but a man is not bound by a statement of an attorney at a time when he goes to examine a witness who has been summoned by the other side for the purpose of knowing what that witness is about to say. That is not an admission made in the cause. It is a mere statement of his attorney. Evidence

of that kind is very much subject to be misrepresented, and has never been admitted in cases except through want of care at the time. When Mr. Collins is called he may have put to him that which it is supposed that the present witness may answer to the question you desire to put to her, that is to say, if it be material, otherwise not. And if he should deny what it is supposed that she can state that he said, he may then be contradicted by calling this or another witness. That has, in my experience, been the universal practice. It would be contrary to the practice in these proceedings, and it would be introducing a most inconvenient course, if it were allowable to call any man with whom an agent may have talked from the time of the election up to the time of the trial of the petition, and to begin by asking that man what the agent said to him, without even suggesting that it was anything material. It would be turning the inquiry into something worse than an inquisition. I can quite understand why election committees have sometimes admitted statements made by election agents within a short period after an election, and if such a question is ever raised before me, it will be time to pronounce my opinion when the case arises."

Cases which may be added after delivery of particulars. (2) 197.

In answer to a question put by counsel for the Petitioners, Mr. Justice WILLES said that he was induced by a consideration of public policy to allow any case in which the sitting member is alleged to be personally implicated to be added to the particulars, giving time, if necessary, for the case to be answered; but he would not allow any case against an agent to be added to the particulars, unless it be shown to have come to the knowledge of the Petitioners since the particulars were delivered.

Mr. Justice WILLES, in his judgment, declared the Respondent duly elected.

As to the law of agency, he said :—

Agency within meaning of 17 & 18 Vict. c. 102, s. 36.

"Of course there are many persons who are employed at an election, and who in one sense are agents of the candidate, but who are not agents in the sense that the election would be considered void by reason of their misconduct. What is then the extent of authority which will make a person an agent, so that misconduct

to the extent of bribery or treating, or other corrupt practice, will have the effect of unseating the member, even although he may have been innocent of such corrupt practice himself, and may have been unaware that it was committed, and may even have forbidden it to be committed by the agent? The meaning of 17 & 18 Vict. c. 102, s. 36, is this, that if, supposing bribery, treating, or undue influence to have been legal acts, it would have been within the scope of the employment of the person who commits either of them to do that in advancing the views of the candidate in the capacity in which the agent is employed, then his committing such acts, notwithstanding they are illegal by the statute, shall bind the member to the extent, not of making him subject to penalties, but of having the election at which such practices took place by an agent declared void. All I say now is that the agent must be an agent employed by a member to canvass, that is not necessarily to canvass generally, but to canvass a particular voter or voters in respect of whom the act was done. Of course the act might be extended, on the one hand, to a person engaged in the general business of election, who of necessity would have the power implied of doing the minor act of getting votes; on the other hand, it might be limited to the case of a person who was employed to canvass a particular voter or particular voters only, and then that person would be one whose authority being limited to such voter or voters, his illegal act in respect of others could not affect the member, because he would be only an agent in the particular limited capacity. Again, there might be put, proceeding still in the same direction, cases in which a person, although nominally and popularly a canvasser, would really be no agent at all. You might put the case, which I believe is not uncommon, and which I could conceive might take place very easily in a county or other large constituency, without authority, properly speaking, to canvass at all; a person who, though called a canvasser nominally, was in substance not a man whose influence was relied upon, but was rather, upon the facts, a mere messenger sent round to know how the voters in the district meant to give their votes—a person sent round rather for information for his employer than with a view to his exercising any influence either personal or by his powers of persuasion, upon the

persons whom he was sent to ask how they meant to vote. And I can conceive that it would be very unjust with reference to the latter class of persons, unless he were really proved to be an agent by other evidence, to make the member liable for what he did, to hold, in fact, that he was an agent at all."

Parliamentary Elections Act, 1868, s. 44.

As to the light thrown upon the law of agency by the Parliamentary Elections Act, 1868, s. 44, he said :—

"The expression used in that section is 'a canvasser or agent for the management of the election.' This expression seems curiously to chime in with the rule adopted by the Judges who have had to deal with these matters."

Meaning of 17 & 18 Vict. c. 102, s. 36.

As to the meaning of the 36th section of 17 & 18 Vict. c. 102, he said :—

"The only matter that ever made me entertain a doubt upon the construction of that section, was the including of treating in the same category with bribery and undue influence. Bribery is dealt with by the second and third sections. The offence of bribery is committed by any person who gives or promises anything to induce another to vote, or to abstain from voting; and of course it is committed by a person who accepts a gift or offer, no matter what the form of the gift or benefit may be. The language of the 2nd and 3rd sections is sufficient, I think, to include every case of an unfair attempt to influence by an offer of any advantage. And the offence under that 2nd section may be committed by the member or by an agent, or by a person who is wholly unconnected with either. The 4th section, on the other hand, dealing with corrupt treating for the purpose of influencing the election, or a vote of a voter at the election, in terms is limited so far as any direct penalty is imposed to the candidate and voter only, as I read it, and therefore it seems at first sight as if it is only the misconduct of the candidate in respect of treating that should have the effect of avoiding an election. When, however, the 36th section is turned to, it is found that whether the candidate himself or his agents be guilty of bribery, treating, or undue influence, the same consequence is to follow. He cannot be elected during the existing Parliament, and he is also rendered incapable of sitting, and the latter words have the effect, not only of preventing him from being elected *in futuro* to a vacancy during the Parliament, but they

react in a proceeding like this upon the election which is in question, and make it the duty of this tribunal to declare the election to be void, so soon as it is compelled in the course of its duty to declare the candidate, either by himself or his agents, guilty of either of those practices. The doubt which crossed my mind was whether, reading the section by referring each to each, it ought not to be limited to bribery, treating, or undue influence of a candidate, and bribery or undue influence of a candidate, and bribery or undue influence (not treating) of his agent, but I think to put that limited construction upon it would be to adopt what certainly has not been treated as the fair interpretation of the Act, and has not been the usual interpretation of the Act. I think that the literal interpretation of the 36th section, without reference to the difficulty arising out of the 4th section, is the proper one to be adopted."

As to the 23rd section of 17 & 18 Vict. c. 102, he said :—

17 & 18 Vict. c. 102, s. 23.

"While it appears clear to me that the 36th section of the 17 & 18 Vict. c. 102, does, by reference to the 4th, make corrupt treating by an agent a ground for holding the election to be void, I am equally clear that the 36th section does not so incorporate the 23rd section as that an act done by either the member or an agent in violation of the 23rd section only, shall make the election void, unless that act also falls within the provision of the 4th section. It should seem to have been usual in former times, and no doubt was the practice at least up to the year 1854, when the Corrupt Practices Act was passed, without any improper design upon the voters, and with a view to profusion, which some might dignify by the name of hospitality, to give every voter who came up pledged for a candidate, or who had voted for a candidate, at the election, refreshment, either by opening a common table at some inn where the voters breakfasted before they went to the poll, or where they had refreshments before they left the town, after polling, and before they returned to their homes. I cannot help thinking that that was the sort of practice with which, whether corrupt or not, the Legislature was dealing in the 23rd section of the statute, and also I am inclined to believe, though I cannot precisely cite my warrant for believing it, that where a farmer, for instance, came up from a distance to vote at a county election, it was not uncommon to have such an open table as that

to which I have referred, not for the purpose of catching people's votes by the attraction of the meal, but simply as it was then thought reasonable and was not uncommon.

"If to give a voter something to eat upon the day of the polling had been in itself treating, the 23rd section would have been unnecessary, the 4th section, dealing with corrupt treating, would have been sufficient to dispose of the case. Moreover, if it had been intended by the Legislature in making that sort of practice which prevailed here and elsewhere illegal, as no doubt it is now by the 23rd section, to make it also amount to corrupt treating within the meaning of the 4th section, the Legislature would have so declared itself in the 23rd section. Has the Legislature so declared itself? The 4th section deals with the case of 'a candidate who shall corruptly by himself,' and so on, 'provides or causes to be provided,' and so on, 'any meat, drink,' and so on, 'for any person, in order to be elected,' which would refer to general ingratiation, 'or for being elected,' which seems only to be an echo of the former sentence, 'or for the purpose of corruptly influencing that person or any other person, to give or refrain from giving, his vote,' which would seem to deal with pampering the appetite of some particular person or persons, without any general hospitality in the way of ingratiation. In order that the case should fall within that section it is necessary to prove, not only the fact that meat or drink was given to a voter (I am now dealing with treating), but that it was done with a corrupt design to influence the election or to obtain a vote or votes.

"Now turning to the 23rd section, which deals with the mere fact of giving refreshments to voters on the day of the poll, that section, after reciting that doubts have arisen as to whether the giving refreshments to voters on the day of nomination or polling be or be not according to law, goes on to 'declare' that 'the giving or causing to be given to any voter, on the day of nomination or day of polling, on account of such voter having polled, or being about to poll, any meat, drink, or entertainment, in the way of refreshment, or any money or tickets to enable such voter to obtain refreshment, shall be deemed'—what? not corrupt treating, but shall be deemed 'an illegal act.' Now, what are the consequences that follow? A person who is guilty of the offence of

corrupt treating under the 4th section is to forfeit 50*l.*, and a voter who shall corruptly accept meat, drink, &c., given under the 4th section, shall be incapable of voting at the election, and his vote, if given, shall be utterly void. Under the 23rd section, on the other hand, the only consequence is, that the person offending, by which I understand the person who gives the voter the meat upon the days of nomination or polling, whether with a corrupt intention or not, shall forfeit the sum of forty shillings for each offence, to any person who shall sue for the same, together with the full costs of the suit."

Promise of refreshments *in futuro* equivalent to a bribe.

As to the promise of refreshments *in futuro* being equivalent to a bribe, he said:—

"I quite agree that if that were made out, quite apart from the question of corrupt treating, there would be a bribe within the first clause of the 2nd section, by reason of Grose offering valuable consideration to the voters, in order to induce the voters to vote or to refrain from voting, which, with reference to procuring food to be consumed *in futuro*, would be bribery; whereas the mere giving of food to be consumed on the spot is looked upon certainly in a more lenient way, and is dealt with separately, in the manner I have already described, by the 4th section. It is somewhat remarkable, with reference to this distinction between bribery and treating, that it has existed from very early times; and that even with respect to that form of bribery which has always been considered the most odious, the bribery of a person who holds a judicial place, express provisions have been made distinguishing treating from bribery. And without going back to old books, I may mention what is within my own knowledge, that when I took the oath of a Judge some fourteen years ago, one of the terms of that oath was (and, unless it has been altered by the recent Acts, I suppose Judges take the same oath at the present day), you shall not take any gift from any man who may have plea pending before you, unless it be meat or drink, and that of small value. That is not a mere form, chanted by the person who takes that oath, which has existed and been handed down from very ancient times; it is as much as to express that the law will trust even a person who may have to decide upon the lives and properties of others to take, but only in the form of refreshment, which is to be

consumed at the moment and not pocketed or reserved for future enjoyment, small quantities of meat and drink. Moreover, it is an illustration of that saying, which is quite familiar to lawyers, that the law deals with substance and not with shadows. The law allows those trivial matters which occur from time to time, and cannot be prevented, which really do no mischief except in the minds of the suspicious, no inference is to be drawn against a person who simply eats or drinks in the way of moderate refreshment. Well, now, I am quite conscious that that which might present attractions to one man which he could not resist, may to another appear possible to avoid. A hungry creature will go into the trap for a bait, at which the well-fed one will turn up his nose with disdain. But it must be obvious (I have said enough, and I meant no more in what I said than to introduce what really is at the bottom of the decision in all these cases) that the Judge must satisfy his mind whether that which was done was really done in so unusual and suspicious a way that he ought to impute to the person who has done it a criminal intention in doing it, or whether the circumstances are such that it may fairly be imputed to the man's generosity, or his profusion, or his desire to express his good will to those who honestly help his cause without resorting to the illegal means of attracting voters by means of an appeal to their appetites."

What questions arise on evidence of treating.

When giving refreshments is to be considered as bribery.

Applying these principles just laid down to the facts of the case, he went on to say that evidence had been given that refreshments were partaken of by certain voters at the house of one Grose, on the polling-day.

"The true question here is, first of all, whether what Grose did was only letting persons who had polled eat at his house on account of having polled, or whether the house was open with the corrupt intention of catching certain voters as they came in, and inducing them to vote for the Respondent upon the ground that they would by so doing obtain admission to Grose's house: whether, in fact, what Grose did was a mere illegality within the 23rd section of 17 & 18 Vict. c. 102, or whether it was a corrupt illegality so as to come within the 4th section. And further, there is upon these facts a question of bribery to be considered, because, apart from the proper inference to be drawn from the mere fact

that there was a meal at Grose's house at which persons who voted for the Respondent got refreshments after they had so voted, it would still have to be considered whether there was not a previous promise made by Grose to one or more persons (though one would be quite enough) that he should have a dinner if he came in and voted for the Respondent."

After discussing the whole of the evidence brought forward on both sides, he concluded his judgment by answering all these questions in favour of the Respondent.

Costs. As to costs he said :—"The case ought not to be considered as forming any exception to the general rule that the Petitioners, having failed, ought to pay the costs of the Respondent."

CASE XVIII.

BOROUGH OF PENRYN.

BEFORE MR. JUSTICE WILLES, FEBRUARY 24, 1869.

Petitioners: Broad and others.

Respondents: Mr. R. N. Fowler; Mr. Eastwick.

Counsel for Petitioners: Mr. Serjeant Ballantine; Mr. Macnamara.

Agents: Messrs. Wyatt and Hoskyns.

Counsel for Respondents: Mr. Giffard, Q.C.; Serjeant Sleigh.

Agents: Messrs. Baxter, Rose and Norton.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

Evidence was given in several cases as to the employment of voters, but it was not established in any case that they had been colourably employed in order to influence their votes.

Evidence was also given as to bribery, but no case was established.

It was also attempted to prove that a promise had been made to a deaf and dumb voter that if he voted for the Respondents he should be sent to an asylum where he might be cured, but this case entirely broke down.

Before the commencement of the case,

If Respondents prejudiced by insufficiency of particulars

Mr. *Giffard*, for the Respondents, called attention to the insufficiency of the particulars furnished by the Petitioners, pursuant to Judge's order. He asked that counsel for Petitioners should be

furnished by Petitioners, adjournment will be granted at Petitioners' cost.
(1) 2.

called upon to state in full in the opening the names of all persons alleged to be bribed or treated.

Mr. Justice WILLES said that he would apply a remedy in the only form he could; that is to say, if the Respondents were so injuriously affected by the withholding of particulars that there ought to be an adjournment in order to enable them to answer the case, he should order the costs of the adjournment to be paid by the Petitioners, and if the Petitioners succeeded he should consider whether their non-compliance with the order of the judge ought not to be visited by the Judge abstaining in his discretion from ordering the Petitioners' costs to be paid.

In the course of the case,

Agent extolling candidate to voter—and suggesting probability of his giving employment to voter not necessarily corrupt.

It was proved that one Rule, a sail maker, was in want of employment before the election, and he applied for employment to one Freston, the Respondent's agent. Freston, in answer to his application did not distinctly promise him work, but it was submitted on the part of Petitioners that what Freston said to him as to the Respondent Fowler's getting him employment did amount to a promise to him conditional upon his voting for the Respondents.

Mr. Justice WILLES said as to this, in his judgment:—

"I am not at all aware that if the Respondents had given him employment *bonâ fide*, that is to say, without at all intending to corrupt the man's mind, they might not have done so. A man is not bound to give notice to quit to all his tenants of his way of thinking if he is going to stand for the county, or to refuse to take into his service a man of his way of thinking if he is going to set up for the borough. He must not do that as a reward for the vote which he hopes to obtain, and he must not make the vote a condition of giving employment. But the employment of persons to do work must go on in election times as well as in others; the affairs of life cannot be brought to a standstill. If you have a sum of money, or a benefit, for which nothing is returned, conferred upon a voter, you have a tangible case which cannot be explained away merely by saying, 'I did it, and I had no particular reason for it.' You have then a case in which a member or his agent must be called upon to give an account of what they meant, and

to show satisfactorily that that which *primâ facie* was giving a benefit to a person which might have the effect of inducing him to vote for the member was really done with some other and innocent motive. I am clear that where an unfavourable inference is to be drawn from the fact that some person has been employed one ought to take care to be quite sure that there is something more than merely getting the man's work for that which is the real equivalent for the man's work. I believe that Freston did in this case praise up the Respondent Fowler, that he did commend him as a good man to stand for the borough, in some such way as this, 'That is the man for our borough; he is sure to do you good, and to advance your interest in Parliament, and if he has any employment to give he will be sure to select people from this town,' and so on. There is an old maxim applicable to all transactions for commodities, and I suppose that Members of Parliament are not commodities exempt from it, that simple general commendation of the article you deal in is not to be considered as fraudulent."

Employment of voters—how far permissible. Corrupt Practices Act, 1854, s. 2. Representation of the People Act, 1867, s. 11.

It was proved that one Behenna applied to Freston, the Respondent's agent for employment. Freston sent him to a person who gave him a month's work, a fortnight before the election, and a fortnight after. Freston knew at the time that Behenna was a voter. Nothing, however, was said about his vote till after he was told where he might go and get work. Then he was asked whether he intended to vote for the Respondents, to which he answered yes. He did vote for the Respondents.

Mr. Justice WILLES said as to this in his judgment:—

"Before the passing of the Representation of the People Act, 1867,* committees had often to discuss whether the employment of voters was to be considered as bribery. There is in the reports a series of cases, of some of which I gave a list upon a former occasion.† In these cases it appeared that scores, and in some instances hundreds, of people were employed as messengers and

* Section 2 enacts that voters employed by the candidates in respect of the election within six months before the election are to lose their vote, and it is a misdemeanor for such to vote.

† Vide, ante, p. 79.

watchers, and so forth, that a great proportion of these were voters, and that they were paid for what they did.

"If the mere employment of a man who was a voter, and expected to vote for a Member, was bribery of itself within the second section of the Corrupt Practices' Act, 1854, it is obvious that the conclusion in each of those cases must have been at once that a man paid by a Member, who would not or might not have been employed but for the election, is to be considered as accepting the Member's retainer, that therefore you ought to impute the payment to a desire to induce the voter to vote, therefore there was bribery, and therefore the election is void. But that was not the reasoning adopted. The conclusion adopted in those cases is that unless the employment was colourable, unless, that is to say, it was an employment only in name, and it was shown that the money was given either for doing nothing, or was given in excess for the services fairly rendered by the voter, there was no bribery. If a man was taken into an employment in order to influence his vote; if, for instance, 'Behenna' had intended to vote for 'Smith and Hodgson,' or not at all, and then Freston had said, 'Oh, come into the employment of the Respondents, and vote for them,' that would have been a bribe no doubt. If he had said to Behenna, 'Oh, come into the employment of Messrs. Fowler and Eastwick,' Behenna, having engaged himself to the other side, there would have been strong reason for inferring that it was indirectly a bribe, because the inference would be that it was intended to change the man's mind. Where, however, there is the case, as Behenna's was, of a man who intended to vote for the Respondents, and through the intervention of an agent of theirs, got a month's work, there is not necessarily a case within the terms of the second section of the Corrupt Practices Prevention Act, 1854.

"I dispose of Behenna's case in this way. I cannot myself see the distinction between employing a man for the purposes of the election and getting a man employment at his ordinary work and at proper wages in another capacity, except that the former would seem to be rather more objectionable than the latter; and I see very great objection in the former employment, though none at all in the latter, unless all the ordinary operations of human

life are to come to a standstill, simply because there happens to be an election coming on."

Commenting upon another case of alleged colourable employment of a voter, he said further on this subject:—

"If a man who has a large shipbuilding yard, after setting up as a candidate for a place, takes into his employment men whose services he really wants, without rejecting those whom he knows to be favourable to him, and who he knows intend to vote for him, it would be, in my judgment, an abuse of language to call that bribery. To take another case. Suppose a voter said, 'Well, I really cannot vote for you, for I have to leave for the Continent this evening, it would be so inconvenient for me to stay;' and the candidate were to answer, 'Every vote is of great importance; pray stay and vote, and you shall have a bed at my house.' Supposing a candidate were to address that to some one in his own condition of life, certainly one might with a perverse ingenuity come to the conclusion that both the voter and the candidate were corrupt people. But I hardly think that could have been said, supposing the candidate had been a Tory and the voter had been Sir Robert Harry Inglis, or supposing the candidate a Liberal and the voter Mr. Byng. You must in such case look, not so much to the literal terms which are used, as to the substance and reason of the thing. I think it would not be right or reasonable to hold that there was bribery in those cases unless there was colourable employment or a condition made."

When case will be investigated, though not in particulars.

Upon Mr. *Giffard*, for the Petitioners, calling attention to the fact that the names of two witnesses about to be called by the Petitioners were not in particulars,

(1) 152.

Mr. Justice WILLES said that the cases appeared from the opening to be so serious that he should feel it to be his duty to investigate them in some form or other.

Mr. Justice WILLES, in his judgment, declared both the Respondents duly elected.

Return of expenses, what items should be included.

With regard to the rendering of accounts, in pursuance of 26 Vict. c. 29, s. 4, and as to what expenses should be included in them, he said:—

"A Mr. Freston was sent down at considerable expense to make

inquiries prior to the registration; he was also employed at the registration. These are expenses which could not, as I read the Act, probably come into a properly framed account, though I should not like to advise any one to leave them out, who was anxious to avoid the penalties of not accounting."

Costs. As to costs he said:—

"I do not think that there is anything to take them out of the general rule."

CASE XIX.

BOROUGH OF SALFORD.

BEFORE MR. BARON MARTIN, MARCH 2, 1869.

Petitioners: Messrs. Roderick Anderson; Jesse Bryant; Edward Charlton Harding.

Respondents: Mr. Edward Cawley; Mr. William Edward Charley.

Counsel for Petitioners: Mr. Higgin, Q.C.; Mr. Pope; Mr. Edwards; Mr. Armitage.

Agents: Messrs. Sale and Co.; Mr. Charles Makinson; Messrs. Reed and Co.

Counsel for Respondents: Mr. Holker, Q.C.; Mr. Herschell.

Agents: Messrs. Slater, Hiele's and Co.; Messrs. Tahourdin.

THE petition contained allegations of bribery, treating and undue influence, and, for a fourth allegation, that the Respondents did by themselves and other persons on their behalf, hire and engage and pay money for and on account of a number of conveyances for the purpose of conveying voters to the poll, and which were used for such purposes on the day of the election in their interest.

It was proved that a considerable number of cabs were hired for the Respondents, not for the conveyance of voters to the poll, but for the canvassers to go in to the places where the voters were at work, the canvassers then walking up to the poll with the voters. It was not proved (although it was alleged), that in many instances voters were conveyed in these cabs. Some evidence was given of general rioting and intimidation, and also of treating, but no case was established on either ground. Only 2*s.* 6*d.* was proved to have been spent in bribery.

Effect of illegal payments for conveying voters to the poll. Representation of the People Act, 1867, s. 36.

In the course of the case,

Upon evidence being tendered as to the conveyance of voters to the poll,

Mr. *Pope* submitted that by 30 & 31 Vict. c. 102, s. 36, it was made illegal to pay money on account of the conveyance of voters to the poll, and that, if it was done wilfully and knowingly in violation of the Act of Parliament, it was a corrupt act, and that if the corrupt act had the effect or was intended to have the effect of influencing a vote it would avoid an election.

Mr. *Holker* contended that the violation of the Act might possibly render a candidate liable to an indictment or some punishment, but to nothing more.

Mr. *Pope*:—"That is in the case of an isolated act, but in this case it is a systematic and intentional doing of an illegal act."

Mr. Baron MARTIN:—"If a candidate deliberately and of purpose runs counter to an Act of Parliament which directs a thing not to be done, I think that common law will operate upon it, and the election will be void. However, I shall not decide it myself, but, if it is necessary, I shall grant a case for the Court of Common Pleas."

Subsequently Mr. *Holker*, for the Respondent, after citing the Representation of the People Act, 1867, s. 36, contended that it made it illegal to pay money either to a voter or to any one on his behalf on account of his conveyance to the poll, because such a payment might be made a cover for bribery. But he submitted that providing hired cabs was not the same as paying money, either to voters or to any one on behalf of voters, and that it was not an act which amounted to offering unfair inducement to voters to come to the poll within the meaning of the Corrupt Practices Act, 1854. Even if it were illegal it did not follow that it would avoid the election. The payment, in order to have that effect, must be made in the shape of bribery. He then referred to 21 & 22 Vict. c. 87, s. 1, and pointed out that that Act distinctly made it lawful "to provide conveyance for any voter for the purpose of polling." That Act was not repealed in any express terms, and he contended that it was not repealed either by implication. Of course, if it was impossible to construe the two sections consistently with one another, then the later statute would abrogate the earlier.

But here it was perfectly possible to do so if the construction was put upon the later Act which he suggested, namely, that it was not illegal to hire a cab, though it was illegal to pay money for the conveyance of a voter.

Mr. Baron MARTIN:—"I think it is perfectly plain. The 36th section of the Representation of the People Act, 1867, shows as plainly as possible that the intention of the Legislature was that voters should either walk to the poll or go in their own carriages. The excepted cases of East Retford, and other boroughs, make that intention plain, because in those boroughs the voters live at a distance from the polling places. Therefore it is permitted in those cases that hired conveyances should be provided. The legislature has made most stringent provisions as to having polling places in the most convenient places in boroughs for every voter. The intention is to prevent the hiring of conveyances for voters, and to provide that people should walk to the poll or go in their private carriages, and it seems to me that it is the same thing whether a man rides in a private carriage provided for him or comes in a hired carriage."

Mr. *Holker*:—"If that had been the intention of the Legislature, one does not see why they did not repeal the 1st section of 21 & 22 Vict. c. 87 altogether."

Mr. Baron MARTIN:—"I think the Legislature does repeal it."

Mr. *Pope*, in the course of his reply, on being requested to point out how, assuming the conveying voters was an illegal act, it affected the election, submitted that if a candidate or his agent were found wilfully committing an illegal act for the purpose of affecting the election, that illegal act so committed would by common law avoid the election. He drew attention to the definition that Mr. Justice Willes had given of the word "corruptly," namely, purposely doing an act which the law forbids.

Mr. Baron MARTIN, in his judgment, after citing the 4th allegation in the petition, said, as to this:—

"I have already stated that if I considered the allegation proved, I should reserve the point for the Court of Common Pleas, but after the evidence of the Respondent Cawley and others, I could not state as a fact that the conveyances were hired for the purpose of conveying voters to the poll."

Drunkenness of women strong evidence of general state of riot in a borough. (2) 388.

Upon it being proved that a number of women were drunk in the streets on the polling-day,—

Mr. *Holker*, for the Respondents, said that he was at a loss to know to what part of the petition such evidence was directed.

Mr. Baron MARTIN :—"My impression is that the allegation of this petition means that there was undue influence within the meaning of section 5 of the 17 & 18 Vict. c. 102. The same question arose at Cheltenham,* and I there stated that if there was evidence that the election was void at common law on account of general violence and intimidation, I would give a case for the Court of Common Pleas as to whether such evidence was admissible under this petition."

Mr. *Holker* then said that he referred more particularly to the evidence about the drunkenness of women.

Mr. Baron MARTIN :—"I take it that that is clearly an element in the case. In giving a description of the state of a town in a state of riot, if there was a good deal of drunkenness among the women, I think it is a very strong element in the matter."

Account of bankers for Respondent's Committee not evidence against Respondent. (3) 266.

Upon a clerk from the bankers for the Respondent's committee being asked to produce the account of the Respondent's committee, with the cheques,—

Mr. Baron MARTIN said :—"The account is not evidence, if the Respondents object; you must examine witnesses as to it. The account is merely a means of refreshing the memory of the clerk; he must be taken through it item by item."

Corrupt payment made after an election by a canvasser, but without the privity of the Respondent, does not affect seat.

Ordinary agency ceases at the close of the poll.

One Balderstone, a canvasser for the Respondent, and vice-chairman of the district, was asked by Mr. *Pope*, for the Petitioners,—

Q. "Do you remember the Thursday after the election one Kennedy coming to you?"

A. "Yes."

Q. "What did he ask you for?"

A. "He asked me if he was to be paid anything for his work on the polling-day."

* Vide ante, p. 64.

Mr. Baron MARTIN (to Mr. Pope):—"Have you considered whether or not, supposing it were bribery by Balderstone, to pay that would affect the election?" Privity necessary for agency after. (5) 215.

Mr. *Pope*:—"I have considered it as money paid on account of his having voted."

Mr. Baron MARTIN:—"I apprehend that would not affect the candidates. I take it the facts are these: Balderstone was a vice-chairman and a canvasser; the election is over; and after that time he gives a man money on account of the election. I will take it it was corruptly given within the meaning of the latter part of the 2nd section of the Corrupt Practices Act, 1854. But how could that affect the candidates?"

Mr. *Pope*:—"Any person who does that is guilty of bribery."

Mr. Baron MARTIN:—"No doubt: but it is one thing to be guilty of bribery, and another thing to be guilty of bribery so as to affect the election within the 43rd and 46th clauses of the Parliamentary Elections Act, 1868. It strikes me that bribery, after the election, by a friend of the candidate, or a person who had been a canvasser or vice-chairman before the election, would not affect the seat."

Mr. *Pope*:—"I should say that any bribery, whenever committed, necessarily avoids the election."

Mr. Baron MARTIN:—"No doubt if the candidate did it himself it would at once affect the seat, but if done by a person who merely was a man holding some office before the election, I should very much doubt if it would have the same effect. It is no doubt bribery, and the persons concerned in it would make themselves liable to a penalty for bribery."

Mr. *Pope* submitted that incorporating into the 36th section of the Corrupt Practices Act, 1854, the definition given of bribery in the latter part of the 2nd section, viz., corruptly paying money to a person on account of his having voted, section 36 must be read as follows: "If any candidate . . . . shall be declared guilty by himself or his agent of corruptly paying money to a person on account of his having voted, such candidate shall be incapable of being elected," &c.

Mr. Baron MARTIN admitted that the word bribery in the 36th section ought not to have any limitation put upon it,

but he added, "In my opinion the agency ceases with the election."

Mr. *Pope*:—"That is a question of fact."

Mr. Baron MARTIN:—"It is not a question of fact at all. Supposing that five years (I am merely putting it so to make it absurd) after an election, which has been perfectly pure and honest, a voter goes to a person who acted at the election as vice-chairman and canvasser, and says to him, 'I voted for your friend, and I now expect you will give me *5l.* for having done so,' and the man agrees to give it him, under such circumstances a Judge might very well arrive at the conclusion that that was a corrupt payment. But is it possible you have any authority to show that such an act could have relation back and affect the candidate or the person who had been returned, and was filling the seat? If so, the seat of every man who is returned to Parliament would be in the hands of any foolish person who might be induced a week or a fortnight after the election to bribe a voter."

Mr. *Pope*:—"Consider what your Lordship is about to rule. If your Lordship holds the payment after the election was not to avoid the seat, all that would be necessary to be done would be that all the bribes should be given after the return is made, and the seat would be safe."

Mr. Baron MARTIN:—"If the bribes were given with the privity of the member, what you say would be perfectly right, because it would be the same thing as the member himself bribing, and I have no doubt it would affect the member, if he was the person who corruptly gave."

Mr. *Pope*:—"Then why not if his authorised agent was the person?"

Mr. Baron MARTIN:—"Because the agency is over."

Mr. *Pope*:—"Of course your Lordship may find as a fact that the agency of Balderstone terminated at the conclusion of the poll. That is a question of fact, not of law."

Mr. Baron MARTIN:—"If you satisfy me that what took place amounted to this,—that the Respondents, or either of them, went to Balderstone, and said, 'There is a man who has pretended to do some work, but I want to reward him for his vote: will you give him *5s.*?'—no doubt that would affect the seat. But if there was

no such act of the candidate shown, the seat would not be affected."

Mr. *Pope*:—"If your Lordship finds that the act was done neither by the candidate nor his agent, of course the seat would not be affected."

Mr. Baron MARTIN:—"You are using the word 'agent' ambiguously. An agent to affect the seat by reason of an act done subsequently to the election, would be a person with whom there was personal privity for doing the act."

Mr. *Pope*:—"I was assuming for the moment that the act in question was done by the candidate or his agent, and my argument then was, that whether it is done before or after the election does not affect the character of the act."

Mr. Baron MARTIN:—"It does not, if we take the word 'agent' in a particular sense. The agent that I should consider would affect the seat by his act after the election would be a person who did that act with the privity of the member. A person who merely was an agent in the sense that he had been an agent in the election, would not, in my judgment, affect the seat by any corrupt act of his done after the election without the privity of the member."

Mr. *Pope*:—"Take the case of the old boroughs, where men were brought up in a flock and paid so much a head some time after the election. In scores of cases that was held by Committees to avoid the seat."

Mr. Baron MARTIN:—"That was because the Committees found as a fact that the vote was given under the implied contract that the money would be paid."

Mr. *Pope*:—"The result of this principle would be then, that any candidate might have a score of agents to whom 5*s*. or 10*s*. was of no consequence, whose agency would cease at the close of the poll, but who may have committed a hundred acts of bribery."

Mr. Baron MARTIN:—"If you can prove that there were a hundred acts of bribery of this kind done, so as to induce me to come to the conclusion that in point of fact it was paid with the privity of the member hanging back and avoiding taking any part in it in order that the bribe might be given, you affect him at once."

Mr. Baron MARTIN, in his judgment, said further, as to this:—

"Mr. Balderstone, being a committee man, or district chairman, and being a canvasser, his agency for the purpose of affecting the sitting members terminated with the election. He was not a person authorised to make any payment subsequently to that, but he was a person who was employed for the purpose of the polling day and the canvassing; he was employed for that and for nothing else. I think also the act must be done by the canvasser anterior to the election, otherwise the consequences would follow that a perfectly honest and pure election, of which upon the return nothing whatever could be said, might be affected by an act done the following week by an indiscreet person, who having been employed in the election might make a corrupt payment. I cannot think that a corrupt payment made by a person who has been merely a member of committee or a canvasser, and made after the election, and without the privity of the Member himself, could affect the Member."

Mr. Baron MARTIN, in his judgment, declared the Respondents duly elected, but reprobated some of the practices resorted to on their behalf.

Hiring of roughs.

With reference to the hiring of roughs, he said:—

"It was proved that, without the slightest ground, except upon the mere rumour that some of the Irish were expected to come and interfere with people going to the poll (or, according to another account, to protect a certain beershop from which voters were to be taken to the poll), twelve men, the leader of whom was a prize-fighter, were hired by an agent of the Respondents' a few days before the polling day, and that as much as 18*l.* was altogether spent upon them by the authority of the Respondents' agent. Their being employed at all is a thing very much to be reprobated."

Rioting to vitiate an election must be such as to prevent men of ordinary nerve from voting, and it

As to an election being vitiated by reason of general rioting, he said:—

"Before an election can be vitiated by reason of general riot and violence, it must be shown to be such as to affect the freedom of election, which is that every person who has the franchise ought

to be at liberty to go and have the means of going to the poll and giving his vote without obstruction, and without fear or intimidation. To set aside an election on the ground of general riot and violence, it must be established that persons possessing the ordinary nerve and courage of men have been prevented from going to the poll to record their votes. In this case, I think the allegation fails in proof; and I also think that the complaint fails on a technical ground, viz., that it is not alleged in this petition."*

must be so alleged in the petition.

As to the agency of one Kean, a publican, who was alleged to have been guilty of treating, he said he was of opinion that Kean was not an agent. "My view of the law would go quite as far as that of Mr. Justice Blackburn,† but the only evidence that I have is that his house was hired for what I consider an exorbitant sum; and that after that, by an arrangement between him and an agent of the Respondents, named Hall, some roughs were hired, but I am not of opinion that that constitutes any agency between Kean and the Respondents so as to affect their seats by his acts."

What is not enough to constitute agency.

As to paying for refreshments which had been ordered for a number of people, but afterwards countermanded, he said:—

"Mrs. Hulme was directed several days previous to the election to provide refreshment for a very considerable number of people, and she did so; but the person by whom the order was given was advised that it would be dangerous to allow so much refreshment to be given at a public-house, and thereupon he went and countermanded it. Mrs. Hulme sent in a bill, not in respect of the number of persons for whom refreshments had been ordered, but charging only the expenses which she had been put to in making provision for the entertainment: that is a very natural thing, and it is impossible to arrive at the conclusion that the paying of that money was corrupt. It was a reasonable act, and such as any person might do."

Not a corrupt act to pay money on account of refreshments which had been ordered but countermanded.

As to the case of one Moss, who was alleged to have corruptly paid a day's wages to persons in his employ, he said:—

"Mr. Moss was an active partizan and chairman of one of the committees of the Respondents; he had a number of men em-

What is not sufficient evidence to establish a corrupt payment of wages.

* Vide, ante, p. 64.

† *Semble* in the Bewdley case, p. 17.

ployed in his mill, some of whom supported one set of candidates, and others supported the other; he swore that he never interfered with them in regard to their votes, but upon the day of the election a number of his men were absent from their work, and Mr. Moss did take the opportunity of employing several of them for the purpose of aiding him in the election. I cannot think that the payment on the following day (without any previous contract) of their ordinary day's wages at the mill made to the men who voted for their master's candidates, would be a corrupt payment."

Isolated case of bribery by agent, if the amount given is very small, does not affect an election.

As to bribery by an agent, when the sum given is very small, he said:—

"The whole of the money alleged to have been spent in bribery amounts to but 2*s.* 6*d.*, and one would be sorry that bribery to the extent of 1*s.* to one man, and 1*s.* to another man, and 6*d.* to a third, should upset an election; that would be a thing, as it seems to me, which would bring the law into ridicule, if in a case where great expense was incurred I were to say that because an imprudent man, and not the Member himself, gave 1*s.* to one man, and a 1*s.* to another, and 6*d.* to a third, that was to affect the election. I am now speaking of single isolated acts, I am not speaking of cumulated acts; if I were to upset an election for single acts such as these, and such sums as these, it seems to me that the law would be brought into contempt and ridicule."

Costs.

As to costs, he said:—

"I certainly think that costs ought not to be allowed in this case."

CASE XX.

BOROUGH OF BEVERLEY.

BEFORE MR. BARON MARTIN, MARCH 9, 1869.

Petitioners: Messrs. Hind, Armstrong, and Dunnett.

Respondents: Sir Henry Edwards, Bart., Captain Kennard.

Counsel for the Petitioners: Mr. Serjeant Sargood, Mr. Waddy.

Agent: Mr. Hind.

Counsel for the Respondents: Mr. Serjeant Ballantine; Mr. Giffard, Q.C.; Mr. Grove Edwards.

Agent: Mr. Bainton.

THE petition contained the usual allegations of bribery, &c.

It was proved that an extensive system of corruption by means of the misapplication of the funds of the charities of the town, including, particularly, Walker's Gift, and by bribery at the municipal elections, had been carried on for years, and that nearly one thousand voters had been corruptly influenced, with a view to the last election.

In the course of the case,

A witness, Herdman, examined for the Petitioners by Mr. Serjeant Sargood, proved that he had been a recipient in former times of Walker's Gift. He was asked whether he had made an application for a grant in 1867.

Proof of a system of corruption illustrated by particular cases not named in the lists of particulars.

Mr. *Giffard*, for Respondents, objected to this on the ground that the witness's name was not in the list of persons alleged to have been bribed.

Mr. Serjeant *Sargood* said he had meant to prove that this man had himself been paid, but his name was not in the list, and therefore he would not give any individual act of receiving money, but would use him only as a witness giving general evidence on the subject.

The witness having further proved that he had been employed at the municipal election in 1867; that he had asked for 5*s.* for his vote; and that he had been referred to Wrighitt, who was Respondents' agent, was about to give evidence of what had been said to him, when

Mr. *Giffard* objected.

Mr. Baron MARTIN:—"I do not see any objection. I know from the Petitioners' opening that it is meant to show that there has been a system of appropriating this Walker's Gift to those who were not entitled to receive it. As I understand, it is not meant to show anything with regard to bribing individual men, but merely that there was a general system of corrupt influence used by means of this gift for the purpose of affecting voters. It is not personal bribery at all."

Mr. *Giffard:*—"If it is bribery, the particulars have not been given. If it is not bribery, it is irrelevant."

Mr. Baron MARTIN:—"It is evidence of a general system of applying the money coming out of Walker's Gift for the purpose of influencing voters. It is clearly evidence."

Mr. *Giffard:*—"It would clearly be evidence if the particulars had been given."

Mr. Baron MARTIN:—"You do not want any particulars for that. If the order for particulars is the common one, it is the particulars of persons bribed, which means persons bribed at the election."

The order was read; it was as follows:—

"Upon hearing counsel on both sides, I do order that the Petitioners shall, three days before the time appointed for trial, leave with the Master, and also give the Respondents, or their agents, particulars in writing of all persons, with numbers on register, alleged to have been bribed, of all persons alleged to have been treated, of all persons alleged to have been intimidated, of all persons alleged to have been conveyed to the poll or their expenses paid, and that no evidence shall be given by the Petitioners of any

objection not specified in such particulars, except by leave of a Judge upon such terms, if any, as to amendment, postponement, or payment of costs as may be ordered; and I further order that the Petitioners shall, within four days from this day, leave with the Master, and give the Respondents, particulars in writing of the nature of the corrupt or illegal practices charged in general terms in the petition, otherwise the Petitioners shall be restricted to the charges, the nature of which is specified in the petition; and in the event of such particulars of the nature of the corrupt or illegal practices in the petition alleged in general terms, being given, the Petitioners shall three days before the day appointed for trial leave with the Master, and give the Respondent particulars of the person or persons alleged to have been affected thereby, subject to the same consideration as above provided in cases of bribery, or other specified charges."

Mr. Baron MARTIN:—"This man is not a person who is alleged to be bribed at the last election, or to have received anything for it. It is for the purpose of hearing, as was done in the Salford case, the general conduct at the election, and for the purpose of thereby affording evidence which may bear upon what was the general quality of the act which was done afterwards which may affect the election. It is like the hiring of cabs, like the hiring of roughs, like the hiring of public-houses, and having people there treating them. It is clearly admissible in evidence for the purpose of showing what possibly may be the quality of acts which do immediately affect the election. There is nothing in this to confine the evidence in the case simply to what has been done with respect to bribing any particular man; but the Petitioners may give general evidence bearing upon the case, showing the real nature of the transaction here."

Mr. *Giffard* suggested that the last branch of the order pointed out that the Petitioner must, in order to be entitled to give this evidence, have given particulars specifying those individual acts and the names of the persons whom he alleges to be corruptly influenced.

Mr. Baron MARTIN:—"I do not think that is at all necessary."

A witness was examined for the Petitioners, to prove that he was a freeman and voter, and that in 1867 money had been

Payment for admission of freemen a year

before an election not bribery. 17 & 18 Vict. c. 102, s. 36.

supplied to him by the Respondents' agent, Wrighitt, in order to enable him to take up his freedom.

Mr. Baron MARTIN said his impression was that this would not do. Bribery to affect the seat must, in his judgment, be at the election.

Serjeant *Sargood*, for the Petitioners, quoted "Rogers on Elections," (1865 ed.), p. 323. "Payments for admission of freemen and of rates for the purpose of enabling a voter to be registered, which have always been regarded with suspicion, will now be strictly within the statute"—(17 & 18 Vict. c. 102).

Mr. Baron MARTIN said that which vacates the seat is the operation of 17 & 18 Vict. c. 102, which provides for the case where the candidate should be "guilty of bribery *at* such election." He thought it would be impossible to carry that back to 1867, when an immediate election was not in contemplation.

The passage in "Rogers on Elections" being again referred to,

Mr. *Giffard*, for the Respondent, said he thought it referred only to the payment of rates, and

Baron MARTIN concurred in that opinion.

Witness not in list of particulars may be called to prove bribery.

Upon a witness, Thomas Duffill, being called by Serjeant Sargood, for the Petitioners,

Seat how affected by such evidence.

Serjeant *Ballantine*, for the Respondent, objected that his name was not in the particulars.

Serjeant *Sargood* said:—"He and others who are in the particulars are prepared to be called and depose to a certain state of facts which happened at the municipal election. I do not press Duffill's case as one of individual bribery, but I call him to give general evidence of that day to corroborate others. I take him first merely for convenience."

Serjeant *Ballantine*:—"I take it for granted that the only value of this evidence is to show that a bribe was given."

Mr. Baron MARTIN:—"As I understand, Serjeant Sargood is going to prove the bribes given to others who are in the particulars. If this case was to govern the whole concern, and the election depended upon it, inasmuch as the man's name is not in the particulars, a bribe given to him, assuming that there

was one, could not affect it, but he is competent to be a witness to prove a bribe given to others, or indeed, to himself, but it could not affect the seat if it depended upon him alone. As I understand, Serjeant Sargood intends to prove that this man accompanied some others, whose names are in the particulars, and he in company with them received a bribe. The particular is not to limit the witnesses who are called, but merely to limit the acts which are relied upon for the purpose of unseating the Respondent."

Indemnity of witness, 26 Vict. c. 29, s. 7.

A witness, Richard Norfolk, called by Mr. Giffard, for the Respondent, asked before giving his evidence whether he was required to answer all questions put to him.

Mr. Baron MARTIN said:—"The statute (26 Vict. c. 29, s. 7) provides that 'no person who is called as a witness in a case like this shall be excused from answering any question relating to any corrupt practice at or connected with any election forming the subject of the inquiry on the ground that the answer thereto may tend to criminate himself;' and therefore you cannot refuse to answer any question relating to a corrupt practice connected with the borough election in this place; then it is provided that 'where a witness shall answer every question relating to the matter as to which he shall be required to answer, and the answers to which may criminate or tend to criminate him, he shall be entitled to receive' (now it will be from the Judge) 'a certificate stating that the witness was upon his examination required by the Judge to answer questions relating to the matters aforesaid; and if in consequence of the answers given to such questions any information or indictment or action be brought against him, the certificate of the Judge will protect him.' You will be protected in answering questions relating to the borough election."

Mr. Baron MARTIN delivered judgment, declaring the Respondents unseated, and the election void at common law, by reason of general bribery which had taken place.

Election void by common law; general corruption.

As to the effect of general corruption avoiding an election at common law, he said:—

"A man giving a vote for a Member of Parliament under what the law deems undue influence gives no vote at all. This is the

common law; it depends upon no statute, and it is a consequence of it that if the Judge is satisfied that the votes of a considerable number of persons were corrupted and bribed, however innocent the candidate may be, and though himself unconnected with corrupt practices, his election is void by reason of the incapacity of the voters because of general corruption to give valid and effective votes."

The facts are these:—The Respondent Sir H. Edwards is chairman of a company called the Beverley Waggon Company (Limited). The manager is Mr. Norfolk. Mr. Wreghitt has been the agent of the Respondent Edwards for the last twelve years. At the commencement of that time the Town Council was a mixed constitution of Conservatives and Liberals. Since then there has been bribery in every municipal election where a contest has taken place. The amount spent has averaged from 50*l.* to 70*l.* a year, and upon the contested elections from 130*l.* to 140*l.* There has been systematic bribery at the elections of the Town Council for the twelve years during which Wreghitt has acted as agent for Respondent Edwards. That body is now substantially of one political party, and is wholly in the hands of the party to which Mr. Wreghitt and the Respondents belong.

"The freemen of this town have a large quantity of land in which they are entitled to rights of pasture. Their rights are regulated by an Act of Parliament, the effect of which is that there are to be annually chosen twelve persons, called pasture-masters. These pasture-masters employ tradesmen and labourers to a considerable amount. The annual income is 940*l.* From the time Mr. Wreghitt has acted in this borough bribery has been made use of at every election of these pasture-masters, and the effect has been that the whole of them are now of the one political party. They formerly were six and six. These pasture-masters, under the will of one Walker, have the distribution of the interest of 1400*l.* railway stock. It is 'to be divided amongst such poor freemen of the borough or their widows or sons as may require the same, by reason of losses that they may have sustained by the death of their horses and cattle, to enable them to purchase stock or carts or necessary things of a like nature to help them on in the world;' and it is declared to be the wish and intention of Walker 'that

such payments and assistance should be made in such substantial sums as would effect the object that he had in view, and that they should not be given in any smaller amount, so as to embrace a greater number of objects.' Last year the gift, instead of being distributed in considerable sums, was distributed in a number of small sums. It extended over a great number of persons. Thirty-three of them had votes, and of those twenty-six voted for the Respondents at the last election. If this were all, there would be in this borough bribing at the municipal elections, and as a result of such avowed and open corruption the whole of the body substantially merged in one political party; there would be the pasture-masters elected in the same way by bribery and corruption, and the money distributed as stated. This of itself would be a matter that would tell much in the consideration of the present question. But that is not all.

"It was known in the summer that the general election would take place some time in November. The municipal election was held on the 2nd November, and the other was imminent, and took place a fortnight after.

"Upon the Saturday before the municipal election and on the Monday, the day of it, Mr. Norfolk obtained 800*l.* on credit from the bank, and gave it for the purpose of being distributed in bribery to persons named, several of whom accompanied the Respondents on their canvass, and all of whom were active supporters of Sir H. Edwards. The highest sum known to have been spent at any previous municipal election for the purposes of bribery was from 120*l.* to 130*l.*, but upon Monday, November 2 last, a fortnight before the Parliamentary election, 800*l.* were spent in bribery by these men. The municipal election was decided in the early part of the day. After that was done, man after man was bribed with sums varying from 1*l.* to 15*s.*, while the ordinary bribe at municipal elections did not exceed 5*s.* Mr. Norfolk proved that the 800*l.* was so spent.

"Nearly 1000 persons—at least 800—probably of a low class of life, were thus bribed, there being 2600 voters in the borough, and nearly the same persons voting for the municipal and the borough elections. Thus on the Monday fortnight before the borough election 800*l.* had been distributed substantially among the people

who were about to vote at it by members of the Conservative party, many of whom accompanied the Respondents in their canvass. Some of the bribees were told that the money was for the double event. The conclusion I come to is, that this money was expended in bribery for the purpose of influencing the borough election as well as the municipal, and that it was to such an extent as to be general; and that by the common law an election effected by such means was vicious from the commencement."

Costs. Costs will follow the event.

CASE XXI.

BOROUGH OF OLDHAM.

BEFORE MR. JUSTICE BLACKBURN, MARCH 16, 1869.

Petitioners: Messrs. Cobbett and others.

Respondents: Messrs. Hibbert and Platt.

Counsel for the Petitioners: Mr. Rodwell, Q.C.; Mr. Higgin, Q.C.; Mr. Leresche.

Agents: Messrs. Johnson and Wetherall.

Counsel for the Respondents: Mr. Edwards and Mr. Herschell.

Agent: Mr. R. H. Wyatt.

THE petition prayed the seat on a scrutiny for Mr. Cobbett and Serjeant Spinks.

Mr. *Rodwell*, in opening the Petitioners' case, stated that the numbers polled by the respective candidates were—

Hibbert,	6140
Platt,	6122
Cobbett,	6116
Spinks,	6084

He suggested that the simplest course would be to proceed in the first instance with the scrutiny as between Cobbett and Platt, and that when they had placed Cobbett in a majority over Platt, they should then proceed with the case as between Spinks and Hibbert.

Mr. Justice BLACKBURN assented to that course as being a convenient one.

Mr. *Rodwell* then stated the various classes of objections to votes which he proposed to bring forward, and the scrutiny was commenced.

In the course of the case,

Misnomer. It appeared from the poll-book that a certain house was stated to be occupied by William Brown. In reality it was occupied by Thomas Brown, but he was seldom at home, and the rent and taxes were always paid by his wife. He had a son named William Brown, who lived with him, but had nothing to do with the taking of the house, and was in no way responsible for the rates. Thomas Brown finding he had been by mistake entered on the register as William, voted under that name for Hibbert and Platt.

Mr. Justice BLACKBURN said this was no case of personation, but merely a misnomer, and the vote was good.

Personation. It appeared that a voter, Joseph Jackson, who lived in Drury Lane, and who was described in the register as of Drury Lane, tendered his vote for Cobbett and Spinks, and was told that there was but one Joseph Jackson in Drury Lane, and that he had voted already. The vote thus tendered was taken down as a tendered vote, and by mistake made up in the total for Cobbett and Spinks.

It appeared that besides the Joseph Jackson, who was on the overseer's list as of Drury Lane, there was another Joseph Jackson on the list of claimants claiming for Under Lane. This Joseph Jackson's claim had been disallowed on the ground of insufficient residence, but in spite of that he had voted instead of his namesake. The vote which he had thus given for Hibbert and Platt was struck off, and the other vote retained.

Personation. It appeared that there were two William Rothwells, and that the claim of one had been disallowed by the revising barrister; that one, however, had voted for Hibbert and Platt, and consequently the vote of the other, when tendered for Cobbett and Spinks, was not received.

The vote given for Hibbert and Platt was struck off, and the vote tendered for Cobbett and Spinks was added on.

Misnomer.

It was proved that Henry Horsfall voted for Hibbert and Platt. There was no other man of the name of Horsfall in the town. He had not sent in a claim. The list was referred to, and the claim of Henry Horsfall was there stated to have been disallowed, and that of William Horsfall admitted. Held a misnomer, and the vote good.

Where two men of same name. Real owner of qualification votes.

There appeared on the register the following name: John Wolstencroft, of 3, Lion Dam Street. Nature of qualification, 58, Warwick Street, and 3, Lion Dam Street. It appeared that John Wolstencroft, senior, had lived at 3, Lion Dam Street for twenty years, and always paid rent and rates regularly. Two months before the election his son John Wolstencroft, junior, came to live with him. The son had previously lived at 58, Warwick Street, but he gave up that house on coming to live with his father. John Wolstencroft, senior, had been objected to before the Revising Barrister, but the objection had been withdrawn. John Wolstencroft, junior, voted early for Hibbert and Platt; when John Wolstencroft, senior, went and tendered his vote for Cobbett and Spinks, he was told that some one had voted in his name before.

Held, that the father's vote should stand, and the son's vote be struck off.

Vote not vitiated by voter being entered in a wrong name if identity established.

It appeared that a person, whose real name was Bradshaw, had been entered on the register as William Mills; he appeared in the rate-books for '67 and '68 as William Mills, but in the rate-book of '69 he appeared under his own name of Bradshaw.

Mr. Justice BLACKBURN:—"If the person on the register was called by a wrong name, that does not vitiate the vote. It certainly creates a little difficulty in the identity, but it does not annul the vote if he was the occupier of the premises, and the man who was intended to be described." Vote held good.

Misdescription;

William Warburton, described on the register as of 29, Moorhey

altered name of street.

Street, proved that he lived at 29, Gartside Street, and had lived in the same house for five years. The house had formerly, along with some others, been called Pleasant View: and Warburton was rated on the rate-book for Pleasant View. It was proved that Pleasant View was in Moorhey Street, but that in November, 1868, the name was altered to Gartside Street.

Mr. Justice BLACKBURN said this was a mere case of misdescription; the material question in these cases was not whether the description was strictly accurate or not, but whether the voter was the man who was intended to be on the register.

Judge will correct a clerical error as to a number in the poll-book.

(2) 2.

There appeared in the poll-book two Robert Lees, both numbered 892; one stated that he voted for Cobbett and Spinks, and the other for Hibbert and Platt. It turned out that one should have been numbered 893.

Mr. Justice BLACKBURN said it appeared that there had been a clerical error, and ruled that both votes should stand.

What objections must be raised before revising barrister.

Upon Mr. *Rodwell* proposing to object to voters on the ground that they did not occupy the premises in respect of which they voted, but that other persons occupied, were rated for, and had voted in respect of these premises,

Mr. Justice BLACKBURN asked:—"In what respect does that differ from personation?"

Mr. *Rodwell*:—"It is not where one man is personated by another, but where it appears on the register that two persons are registered in respect of one and the same house. I propose to show that the person objected to has left the place for years and years, and that there was no pretence whatever for his being on the register."

Mr. Justice BLACKBURN:—"How can you enter upon that, unless there has been an express decision of the Revising Barrister? My present impression is, that if a man has got on to the list without any objection being raised before the Revising Barrister, I cannot interfere if he is the person who is meant to be described on the register. The only inquiry I can make is this: 'Is the man who voted the same man who is described on the register?' and if he is, I cannot go further into the matter. If there is not

such a man, that is a different thing. Is the voter to whom you object the person described on the register? If he is I cannot go any further into the case. If you can shew that he is not, then the vote will be bad."

If voter objected to at all before the Barrister, any other objection may be taken as to his vote before the election judge. (5) 17.

It appeared that one Firth, whose name was on the register, had been objected to before the Revising Barrister. It was proved that the objection then taken was as to the spelling of his name, but it was not proved that he had been objected to on any other ground. It was, however, sought now on the part of the Petitioners to take an objection to him on the ground that he had no sufficient qualification as occupier.

Mr. *Herschell*, for the Respondents, submitted that there had not been an express decision of the Barrister, within the meaning of the 6 & 7 Vict. c. 18, s. 98, as to the sufficiency of the qualification as occupier, and that therefore that objection could not now be gone into; the only objection that could be gone into was that taken before the Barrister.

Mr. Justice BLACKBURN:—"I am afraid I do not see my way to refuse to enter into the general question of his right to vote. It would have been more convenient if the legislature had expressly enacted that we should only enter into points expressly raised before the Barrister, but the question is whether really on the words of the Act it amounts to that. The point is one well fitted for the Court of Common Pleas."

Mistakes as to qualification if not objected to before revising barrister cannot be entertained.

The vote of John Wild of Besom hill was objected to. It appeared that there were two John Wilds, one living at Besom hill, and another at Sholver fold.

Wild of Sholver fold, who had paid his rates, went to vote, when he found that the other had voted for his qualification.

Wild of Besom hill had not paid his rates, but upon Wild of Sholver fold paying his rates they were by mistake put down to the name of Wild of Besom hill instead of to his, so that on the rate-book it appeared that Wild of Besom hill had paid his rates. The Besom hill Wild had thus got the credit of the rates paid by the Sholver fold Wild, and the Besom hill Wild was thus qualified to vote and voted, whilst the Sholver fold Wild

could not, owing to his not being on the register, having apparently failed to pay his rates.

On Mr. *Rodwell* proposing to give proof of this,

Mr. Justice BLACKBURN said that this mistake ought to have been proved before the Revising Barrister, and that it could not now be entertained.

The vote was retained.

Vote of voter struck off by mistake of Revising Barrister will be counted if tendered.

It appeared that Earnest Ogden had gone before the Revising Barrister to support his vote, but that it had been struck off for no apparent reason, he being in every way qualified to vote. He had tendered his vote for Cobbett and Spinks, but it had not been counted.

Mr. Justice BLACKBURN said he should infer that the decision in striking off the name was clearly an error; he should therefore hold this to be a good vote for the Petitioners.

Service of notice of objection, necessary.

It appeared that a voter Lees had never been served with notice of objection, but had been struck off the list by the Revising Barrister; he had tendered his vote for Cobbett and Spinks, but it had not been counted.

Held that the vote must be counted.

If voter after notice of objection receives notice of withdrawal of objection, validity of vote cannot be gone into before election judge.

It appeared that James Hestor had been served with a notice of objection to his vote before the Revising Barrister; he had afterwards received a notice of withdrawal of the objection. Upon the Petitioners seeking to go into the validity of his vote,

Mr. Justice BLACKBURN said he must refuse to entertain this objection, as it was not a case of express decision of the Barrister.

If name is twice entered, though differently spelt, and a vote given for each entry, one vote must be struck off.

(3) 103.

The name of John Jinks, 14, Charlotte Street, appeared twice in the register, once spelt with a J and once with G. It was proved that only one John Jinks existed, and that he spelt his name with a J. A vote, however, had been given for each John Jinks.

Mr. Justice BLACKBURN ruled that the vote given in the name of Ginks spelt with a G must be struck off.

It appeared that a voter, Richard Harper, had been objected to before the Revising Barrister, but had not appeared at all. Consequently his name was struck off the list. He had tendered his vote for Cobbett and Spinks, but it had not been counted.

Semble, that non-appearance before Revising Barrister, and being thereupon struck off upon objection, is an express decision within 6 & 7 Vict. c. 18, s. 98.

Mr. *Edwards*, for the Respondents, submitted that if a person was objected to he was bound to appear and support his vote, and that being struck off for non-appearance did not amount to an "express decision" of the Revising Barrister within the meaning of the 6 & 7 Vict. c. 18, s. 98.

Mr. Justice BLACKBURN ruled that the vote should be added, but he would reserve the point for the Court of Common Pleas.

Vote will be struck off if *primâ facie* case of non-residence is not rebutted.

The vote of Ralph Houlgrave had been objected to on the ground that he had not been an occupier twelve months before the revision.

It appeared that Houlgrave had sworn before the Revising Barrister that he had been married twelve months, and had occupied 30, York Street, for those twelve months; but the witnesses who were now called for the Petitioner swore that in reality he had only occupied the house eleven months. Houlgrave himself did not appear.

Mr. Justice BLACKBURN:—"This is a *primâ facie* case that he was not an occupier resident for twelve months, and the onus of proof now rests upon the Respondents."

No refutation being forthcoming, the vote was struck off.

Residence after registration. Voters enfranchised by 30 & 31 Vict. c. 102.

It appeared that William Owen had been resident in the borough until shortly before the election; his qualification was a house under 10*l.*; consequently he had been put upon the register for the first time under the Representation of the People Act, 1867: he had voted for the Respondents.

Mr. *Edwards* submitted that under the new franchise residence after the time of registration was not necessary. If a person was once properly on the register he was entitled to vote at the next election whether or not he was residing in the borough at the time of the election.

Mr. Justice BLACKBURN, however, ruled that the provision of the former Act, 6 Vict. c. 18, as to residence was continued in the new Act, and therefore that this vote must be struck off.

Change of residence. What rates must be paid. Notice of rates in arrear.

It appeared that Daniel Wild had lived during the first part of the year ending in the previous July in Lees Road. In February he had moved to another house in the town; he had paid the whole of his rates for his house in Lees Road, but had not as yet paid his rates for his new house.

Mr. *Herschell* referred to *Boodle* v. *Fletcher*, 34 L. J. C. P. 17, in support of the vote.

The vote was held good.

Another voter, Daniel Cooper, had changed his residence in a similar way in the November previous to the registration, and although he had paid all the rates due from him in respect of his new residence, he had not paid in respect of his former residence a rate made in the October before he left.

Mr. *Herschell*, for the Respondents, submitted that by section 28 of the Representation of the People Act, 1867, notice of rates in arrear should be given by the overseer to the voter.

Mr. Justice BLACKBURN:—"But this is an October rate; and the section only deals with the rate due in January."

Mr. *Herschell* submitted that the same rule should be taken to apply to both rates.

Mr. Justice BLACKBURN ruled otherwise.

The vote was struck off.

Occasionally sleeping in a house not sufficient residence to give a vote.

It appeared that John Baxter kept a public-house in the town, but he had a house in the country where he usually slept. Occasionally, however, he slept at his public-house, and there was a bed kept there for him; he had voted for the Respondents.

Mr. Justice BLACKBURN said that the vote must be struck off, in accordance with the last decision on the point in the Court of Queen's Bench, where it was held that a man's residence was where he habitually slept.*

Residence of voter partly within the distance of seven miles from boundary of borough.

The vote of one Radcliffe was objected to on the ground that he did not reside within the statutory seven miles. A surveyor stated that he had measured the distance from the boundary of the borough to Radcliffe's house, and found that the centre of the house, which was a very large one, was not within the seven

* R. *v.* Overseers of Norwood, L. R. 2 Q. B. 457.

miles, but the outside of the house on the side nearest the borough was 20 feet within the seven miles. The outside farthest from the borough was 30 or 40 feet beyond the seven miles.

Semble, vote good. 3 (155).

Radcliffie proved that he slept in a room about the centre of the house, but that his rooms for entertainment were on the side of the house nearest to the borough and clearly within the boundary.

Mr. Justice BLACKBURN reserved his decision in the case until the event of its becoming material, the vote in the meantime being considered good.

With regard to striking off the votes of minors, aliens, and women, Mr. Justice BLACKBURN held that infants and aliens, being men subject to a legal incapacity, could not be struck off unless an objection to them had been first taken before the Revising Barrister; but that women, not being men at all, were in a different position; their votes, therefore, might be struck off, but that if it come to a question of one vote, he would reserve this point for the Court of Common Pleas.

Minors and aliens not to be struck off unless objected to before Revising Barrister; *aliter*, women. (4) 143.

In the case of some voters who had received parochial relief after the time of the registration, Mr. *Herschell* contended that such a receipt would not be an objection to their votes.

Mr. *Rodwell* contended that it would.

Mr. Justice BLACKBURN said he had almost taken it for granted that parochial relief after July 31 annulled the vote. If any decision could be cited to the contrary, he would reserve the question; otherwise he would hold such votes bad. The nearer the time of receiving relief was to the time of the election the stronger was the disqualification. The votes were struck off.

Receipt of parochial relief after July 31 and after registration.

The vote of William Shaughnessy was objected to on the ground that he had received relief two days after the election was over.

Mr. Justice BLACKBURN:—"The vote which was on the 17th would not be vitiated by relief received on the 19th."

Parochial relief given after election does not vitiate vote. (5) 127.

It appeared that parochial relief had been received by the

Parochial relief given to

parents of voter does not vitiate vote. (5) 132.

mother of one Scholfield, and by the father of one M'Dowell. They were both voters who had voted.

Mr. Justice BLACKBURN said that relief given to parents was not the same as relief given to wife or children, and that this did not vitiate their votes.

Medical relief. Effect of on vote.

It appeared that medical relief had been ordered by the relieving officer for the child of a voter, Thomas Mannock.

Mr. *Edwards*, for the Respondents, submitted that this was not such a receipt of alms as would disqualify a man from voting.

Mr. Justice BLACKBURN :—"It is of just as much expense to the parish as any other sort of relief. The vote must be struck off."

Deaf and dumb child of voter maintained by parish at deaf and dumb school does not invalidate vote. (5) 154.

It appeared that the child of a voter, Smithys, was deaf and dumb. It was maintained at a deaf and dumb school at Manchester out of the funds of the guardians of the union for that purpose. It had been at the school for five or six years. Smithys had voted for the Respondents.

Mr. *Edwards*, for the Respondents, submitted that relief given to a deaf, dumb, or blind child of a voter was excepted from the ordinary rule.

The vote was retained.

Medical relief ordered by the police authorities, and paid for by the county, does not invalidate vote. (5) 165.

It appeared that a voter, Madden, had been attended gratis by a doctor in consequence of an assault committed on him by two men who were tried and convicted for the offence. The doctor was paid by the county.

Mr. Justice BLACKBURN said that this was not parish relief, but police relief given by those who conducted the prosecution. The vote was therefore good.

Relief of grandchild of voter does not invalidate vote.

The vote of Samuel Kirk was objected to on the ground that parochial relief had been given to his grandchild, who lived with him.

Mr. Justice BLACKBURN said that as there was no interpretation clause to the statute (5 & 6 W. 4, c. 76), he should hold that child did not include grandchild. The vote was held good.

Providing coffin is parochial relief.

It appeared that a voter, Whatmough, had had a coffin supplied to him by the parish to bury one of his children in. He had voted for Cobbett and Spinks.

Mr. *Higgin*, in support of the vote, called attention to the orders of the Poor-Law Board as to giving a coffin to a person unable to bury a corpse.

Mr. Justice BLACKBURN held that it was clearly a form of parochial relief, and the vote was struck off.

Loan by relieving officer does not invalidate vote. 4 & 5 Will. 4, c. 76, s. 58. (5) 169.

It appeared that a voter, Joshua Smith, had an order given him about a month before the election by the relieving officer for a coffin and dues to bury his wife, under the promise that he would pay it back by instalments of so much a week. It had all been repaid, but not until after the election.

Mr. *Herschell* submitted that by 4 & 5 W. 4, c. 76, s. 58, any relief given as a loan, with or without an engagement to repay, was to be considered as a loan.

Mr. *Leresche* cited decisions of committees against that view.

Mr. Justice BLACKBURN decided not to strike off the vote, but allowed the point to be reserved for the Court of Common Pleas.

Vote given under intimidation must be struck off, but vote that voter would otherwise have given may not be added. (6) 125.

It appeared that James Barnes had intended to vote for Cobbett and Platt, but in consequence of John Hadfield, his employer's son, saying to him that if he did so he must stand the consequences (by which he understood that he would be dismissed if he did so), he voted for Hibbert and Platt.

It was submitted by Mr. *Rodwell* that upon this evidence a vote should be struck off from Hibbert and one added for Cobbett, also that the vote of the intimidator, John Hadfield, should be struck off.

Mr. Justice BLACKBURN said that a vote must be struck off from Hibbert, but that he could not order a vote to be added for Cobbett. The question of John Hadfield's vote might be postponed.

Vote obtained by intimidation bad, whether threat

It appeared that a voter, Dyson, intended to vote for Cobbett and Spinks. On the polling-day one Lees came to him with a note in his hand, which Lees stated came from Dyson's master

can be carried out or not. (6) 149.

and contained these words, "Those who don't vote the way their master wishes them will be discharged." Yielding to this, Dyson went and voted for Hibbert and Platt. There was no evidence to show that the note was genuine, as Dyson did not see it himself.

Mr. *Herschell* submitted that if intimidation was done in the name of a person without his knowledge or authority, the vote ought not to be invalidated.

Mr. Justice BLACKBURN held that a vote obtained by intimidation was bad, whether the person using the threat had the power to carry it out or not. If a man held a pistol at another's head, and said he would kill him if he did not give up his money, that would be intimidation, although the pistol was not loaded. The question was whether the man's vote was influenced in such a manner by the representation made to him, that he gave it under protest.

The vote was struck off, Mr. Justice Blackburn refusing to reserve the point.

Payment of day's wages to voter vitiates vote.

It appeared that one Foran, a labourer, refused to go up and vote unless he got paid his fare and his day's wages; whereupon one Pardy paid him 5*s.* for his day's wages, and 2*s.* 6*d.* for his fare he then went and voted. The vote was struck off.

If voter states that his vote has been wrongly recorded for Respondents, onus on Respondents to show that there has not been a mistake.

Edmund Mellor said that he had voted for Cobbett, but it appeared that his vote had been recorded for Hibbert.

Mr. Justice BLACKBURN :—"Poll-clerks are not infallible. There may have been a mistake, and it is now for the Respondents to show that there has not been."

On their failing to do this, the vote was struck off from Hibbert's numbers, and added to those of Cobbett.

For whom voter at the poll said he voted is a question of fact to be determined by the judge. (5) 87.

It appeared that Peter Whittle suffered from shortness of breath. In answer to the question put to him by the poll-clerk as to whom he voted for, he said "Spinks;" and then after a short pause, but without turning away, he added, "and Cobbett." The vote for Spinks only was recorded.

Mr. Justice BLACKBURN :—"It is a question of fact whether he had completed rendering his vote, and the question is whether

it was an imperfect rendering of the vote. But upon the evidence as it stands, I do not see why I should not add the vote."

The vote was accordingly added for Cobbett.

Mistake may be corrected before voting completed.

It appeared that James Chatham, in answer to the question as to whom he voted for, said "Platt and Hibbert," but he immediately corrected himself, and said, "Hold! for Cobbett and Hibbert." The poll-clerk, however, had entered it for Platt and Hibbert, and said it was too late.

Mr. Justice BLACKBURN thought that the voting was not completed when the mistake was corrected, and consequently ordered a vote to be added to Cobbett, and one struck off from Platt.

Vote given at wrong booth.

It appeared that James Scholefield (1) tendered his vote at the right booth for the Respondents, but he was told that he had voted before. James Scholefield (2) had tendered his vote at the same booth (which was not the right one for him to vote at) for Cobbett and Spinks, and it had been recorded.

Mr. *Edwards*, for the Respondents, said:—"Both the Scholefields were entitled to vote, but the vote recorded for Cobbett and Spinks was accepted at the wrong booth, and is bad; that for the Respondents was tendered at the right booth, and is good."

Mr. *Rodwell*, in support of the vote for Cobbett and Spinks, referred to the Cambridge case (Wolferstan and Dew, p. 55), where it was held that a vote was not invalid by reason of its having been recorded at the wrong booth.

Mr. *Edwards*, however, pointed out that by 2 Will. 4, c. 45, s. 68, as to boroughs, no person should be admitted to vote except at the booth allotted for the district wherein his place of abode may be.

Mr. *Rodwell*:—"The prohibition in the section referred to is to the poll-clerk, and it says you shall not do such and such things; but it does not extend to the voter. If the poll-clerk has done wrong, the voter ought not to suffer."

Mr. Justice BLACKBURN:—"I hardly think this comes under the Cambridge case. It simply comes to this, the poll-clerk should have refused the vote, and the voter should have gone to the proper booth. It is not at all an intentional mistake, it was the

fault of the voter as well as the poll-clerk. I shall at present strike off the vote for Cobbett and Spinks; but should this one vote turn the scale, I will reserve the point for the Court of Common Pleas."

Corrupt payment of rates. (4) 63.

It appeared that one Grandridge, on being asked by Michael Smith whether he intended to pay his rates, said that he could not afford to do so. Smith then asked him for his rate paper, and Grandridge gave it to Smith; shortly afterwards it was returned to him receipted. Smith, when called, said that he had paid the rate for Grandridge, but that he had done so merely as a friend, and because Grandridge had said he was anxious to get on the register, but that he could not afford to pay the rates himself. He had never said anything to Grandridge about how he should vote at the next election; but he believed Grandridge was a Liberal, and therefore he wished to get him on the register. Grandridge had voted for the Respondents. Upon these facts,

Mr. *Edwards*, for the Respondents, submitted that there was no evidence that this rate had been paid corruptly within the meaning of the 49th section of the Representation of the People Act, 1867.

Mr. Justice BLACKBURN said:—"I do not think I can consider this case is brought within the 49th section of the Act. That section says that 'any person either directly or indirectly corruptly paying any rate on behalf of any ratepayer, for the purpose of enabling him to be registered as a voter, and thereby to influence his vote at any future election, is guilty of bribery,' and then it says afterwards that the man for whom the rate is paid, if it is paid with his privity, shall also be guilty of bribery, and punishable accordingly. The present question is whether or not this payment was made under such circumstances as to make both payer and payee guilty of bribery. If the Legislature meant the clause to apply to such a case as this, it would no doubt be a question afterwards for those trying the case as a criminal offence to say whether it was one for severe punishment. But in a case which involved the criminality of one or more persons, I must consider that I am construing this section as I should do if I were leaving the question for a jury in a trial of these persons for the misdemeanor of bribery. Now I do not entertain any doubt that both

Michael Smith and Grandridge knew that the rate was paid in order that Grandridge might be enabled to be registered, and that they both knew that the actuating motive in Michael Smith's mind was that he expected thereby that Grandridge's vote would be given for his own party, that is, for the Respondents. It is true that the candidates were not exactly in the field, but it was well known in July that there was to be an election soon. But then this difficulty arises; the Legislature is not content to say, as it might have said, that a person paying a rate for another for the purpose of enabling him to be registered, shall be guilty of bribery, but they thought it necessary to guard it by saying, 'Provided he does it corruptly,' and thereby to influence the vote at any future election.' Now, in construing an Act of this sort, where the word 'corruptly' is used, it is sufficient to show that an act is done with the intention of influencing a voter; that is a corrupt act. 'Corruptly' means, according to the Act of Parliament, an act done with intention, and the object which the Legislature had in view was to prevent the doing of any acts with the intention of influencing voters; and if I thought this rate was paid in order to influence Grandridge's vote at any future election, I should hold that that act was corrupt. Now, what does 'thereby influencing' mean? Is it where a man pays another's rate for the purpose of enabling him to be put upon the register, knowing that if the payee has a vote he will give it for the particular side on which his (the payer's) sympathies lie? I think if the Legislature had taken as wide a view as that, they would simply have forbid the payment of rates. It appears to me that what they must have had in view was to forbid the payment of rates where the intention was to obtain an influence over the voter; their object was analogous to that which induced them to prohibit the giving of meat and drink to voters on the polling-day, but not to prohibit giving refreshment for those who were engaged in the election. What they prohibited was the payment of any rates for the purpose of acquiring an influence over the voters. Such a case might arise, for example, in the formation of a society for the purpose of paying the rates of all persons who were unable to pay their own rates; and if it should be proved as a matter of fact that such payments were made for the purpose of acquiring an in-

fluence over voters, I do not know but I should hold the votes bad. It may be that there will be more danger in the case of individual influence, as in this case, than in the action of a society, because in the latter case the proof would be far more readily obtained. But in the present case I do not entertain the slightest doubt that the object in paying Grandridge's rates was to put him on the register, and the motive to do that was that he would vote according to what was known to be his own views in politics. I do not think that that comes necessarily within the meaning of the Act. If the payment had been made in such a way as to make one think it was to require him to vote a particular way, or to give ground of complaint against him if he voted another way, I should hold that the payment was corrupt. But the contrary has been shown. It is difficult to construe a new statute, but if any other construction were to be put upon this section, it would be enlarging the criminal law, and making a man criminally liable in an indictment for misdemeanor for matters which had certainly not been before indictable. The consequence of my view is, that this vote has not been made out to be bad, and therefore I sustain it."

Mr. *Rodwell* applied that the point should be reserved for the Court of Common Pleas, but the Judge refused.

At the close of the fifth day of the inquiry, the Petitioners, having brought forward 190 cases, had succeeded in 48, while the Respondents, having brought forward 72, had been successful in 42. At the close of the sixth day, the Petitioners had nearly exhausted the original lists of objections, and Messrs. Platt and Cobbett were still upon an equality. On the following morning, Mr. Rodwell stated that the Petitioners would make an admission with reference to one vote, so as to put Platt in a majority, and would withdraw from the inquiry.

Costs.

With reference to costs, Mr. *Rodwell* suggested that as this was the first case of a scrutiny under the new procedure, Mr. Justice Blackburn should consult with the other election Judges before giving his decision.

Mr. Justice BLACKBURN assented to this course, and it was subsequently decided that the Petitioners should pay the costs of the whole inquiry.

CASE XXII.

BOROUGH OF NORTHALLERTON.

BEFORE MR. JUSTICE WILLES, APRIL 12, 1869.

Petitioner: Mr. J. W. Johns.

Respondent: Mr. Hutton.

Counsel for Petitioner: Mr. Serjeant O'Brien and Mr. Hugh Shield.

Agent: Mr. Trevor.

Counsel for Respondent: Mr. O'Malley, Q.C., Mr. Serjeant Sleigh, Mr. Trotter.

Agent: Mr. Trotter.

THE petition contained the usual allegations as to bribery, &c., and prayed the seat on a scrutiny for the Petitioner.

The charges of corruption failed altogether, and upon the scrutiny the Petitioner failed to upset the Respondent's majority. The numbers polled were—

Hutton	386
Johns	372

In opening the Petitioner's case,

Serjeant *O'Brien* said he should prove that several voters had had their railway fares paid by the Respondent after they had voted, and he submitted that that amounted to bribery.

Payment of travelling expenses after poll without previous promise not bribery.

Mr. Justice WILLES said:—"No doubt if a promise were given beforehand that the fares would be paid, it would be bribery. I do not know, however, that paying afterwards without

any previous promise would amount to bribery. This is a point, I believe, that has yet to be decided."

In the course of the case,

Intimidation to threaten to give up pew in dissenting chapel.

Evidence was given to prove that two persons had threatened one Stubbings, a Baptist minister, that they would give up their pews in his chapel if he, Stubbings, voted as he wished to do.

Mr. Justice WILLES, in his judgment, said as to this:—"If agency had been proved I should have held it to be a case of intimidation within the 5th section of the Corrupt Practices Prevention Act, 1854."

In the course of the scrutiny, it was submitted that the votes of the two persons who had threatened Stubbings ought to be struck off.

Mr. Justice WILLES said he would put a query to their names, but that he would not decide the question until it became necessary to do so.

Offer of bribe not proved by mere general conversation as to Respondent's wealth or liberality. (1) 149.

Evidence was given by one Ann Mark, the wife of a voter, that an agent of the Respondent had said something to her about getting a piece of land and a cheap house under the Respondent, though it did not appear that any definite promise had been made, or any condition proposed as to her husband's vote.

Mr. Justice WILLES said, in his judgment, as to this:—"One ought to be sure that these general and very often exaggerated commendations of the wealth, and the liberality, and other qualities of the candidate have not been construed or tortured by the particular witness into a promise of some special benefit to himself. The Judge must be satisfied that the conversation out of which a bribe is sought to be extracted really had a special character, and that it was not a mere general commendation of the candidate by his agent as being a good man for the place."

For what purpose canvass books must be produced. (2) 115.

In the course of the Respondent's case, and after the Respondent had been called as a witness,

Serjeant *O'Brien*, for the Petitioner, asked the Respondent to produce his canvass book.

Mr. *O'Malley*, for the Respondent, objected.

Mr. Justice WILLES ruled that counsel were at liberty to ask for any particular entry in the canvass book.

The book was handed to counsel, and the entry asked for was pointed out.

In the course of the scrutiny,

Distinction between non-residence before and non-residence after July 31, *semble*, non-essential. (3) 144.

It appeared that a voter, Francis Barker, who had voted for the Respondent, had left the borough before the last day of July, and had become non-resident. No objection had been taken to him before the Revising Barrister, and his name had remained on the register.

Mr. Justice WILLES said that if he had gone away on August 1, his vote would have clearly been struck off, but the question arose whether the distinction between non-residence before the last day of July and non-residence after that date was an essential one. At present his impression was against there being such a distinction; but if it became necessary to decide the case, he would hear counsel for the Respondent upon the point.

Vote given by one who has promised to pair with another voter good in the absence of fraud. (3) 107.

It appeared that two voters, Thompson and Stephenson, had agreed to pair, and not to vote. Just before the poll closed, Thompson having been informed that Stephenson had broken his promise, and voted for the Petitioner, went into the polling-booth for the purpose of inquiring whether it was true or not that Stephenson had voted. When he got into the booth he was immediately asked by the returning officer, "Whom do you vote for?" Thompson answered, "For Hutton; but stop," he added, "has Stephenson voted?" On being informed by one of the check-clerks that he had not, he instantly said to the poll-clerk, "Then mine is no go." The poll-clerk, however, had by that time put down Thompson's name as voting for the Respondent, and so it was left.

Mr. Justice WILLES remarked that this case appeared to be the same as the Abingdon case. He then asked Thompson, "You intended to vote for Hutton, if you did vote at all?"—*A.* "Yes; that is what I said to Hutton, 'if I voted at all.' Mr. Hutton said, 'Do you go against me?' I said, 'On no account whatever.'"

Mr. Justice WILLES said it was a clear vote for the Respondent,

unless it was defeated by the 5th section of the Corrupt Practices Prevention Act, 1854. He would not give any decision at present.

Subsequently he added that it appeared to him that Thompson, not relying on what he had heard outside, had gone in to make his own inquiries, and had then voted before making inquiries. At the same time, he thought that the notion of voters pairing with each other was not recognised by the law, and that it was a mere honourable engagement between the parties. To allow an objection like the present, in the absence of any trick or unfair practice on the voter, would be extremely inconvenient, and would open the door to a large number of disputes. If Thompson had been proved to have deliberately played false, it would have been different; but as he had behaved honestly, he could not interfere.

Upon Serjeant *O'Brien*, for the Petitioner, stating that he proposed to go into the class of cases which raised the question as to opening the register,

Mr. Justice WILLES said that his impression was that the register could not be opened when the Barrister had given no express decision, and that the 98th section of 6 & 7 Vict. c. 18, was conclusive upon that point.

Printer delivering messages incidental to printing not employment in conduct of election.

Serjeant *O'Brien* submitted that the votes of printers who had also acted as messengers should be struck off, as being voters who had been employed in the conduct of the election.

Mr. Justice WILLES said that might be so, if there was a stipulation that a person should be employed as a messenger as well as a printer. But it would not apply to messages incidental to printing, or to any voluntary acting as messenger without a stipulation.

What sufficient residence. (3) 206.

It appeared that George Johnson, farmer, had about eighty acres of land of his own within the statutory seven miles. On the land was a house for which he paid the rates and taxes, and of which he was the exclusive occupier, but he allowed his sister to live in the house as his guest. He slept there himself only occasionally, and on those occasions his sister attended upon him, as he kept no servants of his own in the house, but his bailiff lived in a part of

the house separated from the rest. The furniture was, with very trifling exceptions, all his own.

Mr. Justice WILLES said he thought this was a slight case of residence, but a real and sufficient one for the purpose.

What sufficient residence. (3) 106. (3) 177.

It appeared that Thomas Bilton was a plate-layer, and worked on the railway; he had a house in the borough, where his wife and daughter always lived, but he himself only occasionally came and slept at home.

Mr. Justice WILLES said the vote would do at present, because the man's wife resided in the borough.

What sufficient residence. Establishment always kept up, but only occasionally resided in. Vote good. (3) 177.

It appeared that one Marshall had a house within the borough, which he always kept up, although he only stayed occasionally; he kept there two servants to look after the place, and he often allowed persons to stay there as guests of his. In the last year he had been there on sixteen different occasions. He had also another establishment beyond the seven-mile limit, where he more generally resided. He had voted for the Respondent.

Vote held good.

Parochial relief between July 31 and the election, but not before July 31, invalidates vote. (3) 226.

Upon Serjeant *O'Brien*, for the Petitioners, intimating that he was about to go into the cases of voters disqualified on the ground of their having received parochial relief, some of them between July, 1867, and July, 1868, and others between August 1, and the time of voting,

Mr. Justice WILLES said that his impression was that nothing could be made of the cases of relief before July 31, but that relief received between July 31 and the election might be relied on as a legal incapacity.

Semble, funeral expenses relief to master of house. (3) 237.

Upon evidence being given by the relieving officer that he had given a sum of money to a voter for funeral expenses,

Mr. Justice WILLES asked:—"Does relief for burying a person whom the person relieved is bound to bury, come within your province?"—*A.* "Yes."

Q. "And it is relief, as I understand it, to the person who is the master of the house, if there be one?"—*A.* "Yes."

Q. "Is it considered relief to him because he is bound to bury any one who dies in the house?"—*A.* "Yes." Vote struck off.

Proof of marriage by reputation, *primâ facie* sufficient. Adultery of wife answer to relief given to her, but not to her children. (4) 11.

It appeared that a woman, who was the reputed wife of a voter who had voted for the Respondent, had received parochial relief for herself and her children.

Serjeant *Sleigh*, for the Respondent, submitted that there was not sufficient proof that the woman was the wife of the voter.

Mr. Justice WILLES said there was sufficient *primâ facie* evidence.

Serjeant *Sleigh* then said that the Respondent's answer to the case was that the woman had committed adultery, and that her husband therefore was not liable to support her.

Mr. Justice WILLES said that was no doubt a good answer as to the wife, but not as to the children.

Serjeant *Sleigh* submitted that the custody of children of the tender age would belong to the mother.

Mr. Justice WILLES said that could not be so in the case of an adulteress. It was enacted by 4 & 5 Will. 4, c. 76, s. 56, that relief given to children under sixteen, not being blind, deaf, or dumb, should be considered as relief given to the husband of such wife, or the father of such children, as the case might be.

Serjeant *Sleigh* called attention to the Lancaster case (Wolferstan and Dew), in which it was ruled that the relationship of the alleged wife to the voter must be strictly proved.

Mr. Justice WILLES said his attention had been called to the case as a case where laymen were more technical than lawyers. The Committee in that case refused to let a marriage be proved by reputation, but except in bigamy and matrimonial causes, that principle could not stand for a moment in a court of law.

It was then proved that the husband, on discovering that she had committed adultery, turned her out of his house. She took with her two of her children contrary to her husband's wish, and they all three went to the workhouse and received relief. A letter was put in which the husband had written to the Board of Guardians, saying that it was contrary to his wish that his wife

had taken his children with her to the workhouse, and that he was ready to receive his children back, but not his wife, at any moment.

Mr. Justice WILLES said, after hearing the letter, that he believed there had been a *bonâ fide* endeavour on the part of the husband to get his children out of the workhouse, and that the question was, under the circumstances, whether the relief given to the children was disqualifying relief. At present he would give no deliberate judgment upon it.

Mr. Justice WILLES, in his judgment, declared the Respondent duly elected.

Promise of a corrupt character.

Having stated that it would be needless for him to decide upon points raised in the scrutiny and postponed, inasmuch as supposing him to decide them all in favour of the Petitioner, there would still remain a majority for the Respondent, he reviewed the case as to the other part of the petition, and said as to corrupt promises :—

"When I say a promise is of a corrupt character, I call everything of a corrupt character which has a tendency to influence a man's vote with reference to mere lucre instead of honest considerations, including considerations of the legitimate influence which I have already stated it is impossible to exclude, and which it would be impossible to remove by law, because it is part of the nature of things which the law has to deal with and to regulate, but which it cannot alter."

Intimidation.

As to intimidation, he said :—

"A mere attempt on the part of an agent to intimidate a voter, even though it were unsuccessful, would avoid an election."

As to costs, he said :—

"I see nothing to exempt this case from the general rule that costs should follow the event."

CASE XXIII.

BOROUGH OF BEWDLEY.

BEFORE MR. JUSTICE BLACKBURN, APRIL 27, 1869.

Petitioner: Major Anson.

Respondent: Mr. Cunliffe.

Counsel for Petitioner: Mr. Powell, Q.C.; Mr. Macnamara.

Agents: Messrs. Tucker and Lake.

Counsel for Respondent: Mr. Serjeant Ballantine; Mr. Lord.

Agents: Messrs. Lawrence, Plews and Bowyer.

THE petition prayed the seat for the Petitioner upon a scrutiny.

The numbers polled at the election were—

Cunliffe	477
Anson	463

In the course of the case,

Residence of voter broken after the registration. (1) 30.

It was proved that one Evans who had voted for the Respondent had been sold up, and obliged to leave his house. This happened some time between the registration and the polling day. Since giving up his house he had lived at an inn in the borough. Having been called as a witness he was asked by Serjeant *Ballantine:*—

"Were you staying at that inn at the time of your voting for the Respondent?"

Mr. Justice BLACKBURN:—"That is not the question; he has

broken up his house within twelve months. It does not matter where he was at the time of the election; the question is, whether he has since the registration broken his residence."

The vote was struck off.

Occasional residence of voter within borough not sufficient. (1) 31.

It appeared that one Edmonds lived at Droitwich, but had within the borough a shop where he kept a bedroom and a bed for himself to use whenever he liked. He did, however, in fact, only sleep there occasionally, and his wife and family always remained at Droitwich.

Serjeant *Ballantine* for the Respondent admitted that he must give up the question of residence.

Borough constable incapable of voting. (1) 35.

It appeared that one Clark had for 45 years been borough constable; when he first commenced to act as constable he was paid no salary by the borough, but was paid by the parties who employed him for serving summonses and other business. Some years ago, however, an alteration was made, and he was now paid £15 a year by the borough treasurer; his duties were to do anything that came within the scope of a constable's duty, as, for instance, to apprehend people when called upon to do so. He had been on the register ever since the Reform Act of 1832, and had never been struck off. He had voted this time for the Respondent.

Mr. Justice BLACKBURN:—"There is great difficulty in getting out of the words of the enactment."*

Mr. Serjeant *Ballantine* submitted that there was not sufficient evidence of appointment.

Mr. Justice BLACKBURN:—"It is difficult in my opinion to make out a stronger case of appointment."

The vote was struck off.

Report by a judge that voter was bribed at a previous elec-

It appeared that two persons, John Hamer and James Hunt, who had voted for the Respondent, had been reported as having been bribed at the previous election.†

* 19 & 20 Vict. c. 69, s. 9, enacts that "no head or other constable already appointed, or hereafter to be appointed for any borough under the said Act of 5 & 6 Will. 4, ... shall . . . . be capable of giving his vote."

† The report was made by Mr. Justice Blackburn, dated January 25, 1869.

tion, does not, under Parliamentary Elections Act, 1868, s. 45, disqualify him from voting. (1) 44.

Mr. *Macnamara*, for the Petitioner, submitted that their votes should be struck off on the ground that they were disqualified under the Parliamentary Elections Act, 1868, s. 45.*

Mr. Justice BLACKBURN said:—"The enactment provides that upon the case being done the evidence should be laid before the Attorney-General to consider whether he would prosecute or not, and if he does prosecute, and the man is convicted, then he falls under the disqualification. But I do not think the report of the Judge is more than committing a man for trial. I do not think it comes within the case of being found guilty. Besides, the determination of a Judge is not a determination upon the case except incidentally. He has only to make a report, and it can hardly be said that that is the same as finding a man guilty. But I go further. The Act speaks of 'an opportunity of being heard,' and I think that does not merely mean that kind of opportunity which a witness has who is called up upon the spur of the moment, and who is subject to cross-examination; but it means an opportunity of being heard when he has had a fair warning of the charge, and is asked to meet it, and be heard by himself or his counsel. Consequently, I do not think that this case falls within the section; but if the election depends upon a single vote I will reserve the case for the Court of Common Pleas, and the matter will be determined before the next registration revision, as it is more convenient that the Barrister should know what they are going to do."

Medical relief given to voter's child on application by his wife, but without his knowledge or desire, vitiates vote. (1) 83.

It appeared that the wife of a voter, Danby, had obtained an order for medical advice for their child, who had injured her knee. Danby did not at the time require parochial assistance, and had not authorised his wife to apply for it; he paid himself for the medicine ordered for the child. He voted for the Respondent.

Serjeant *Ballantine* contended that there was no relief given in fact to the husband by an act done not authorised by him, and not necessitated by the circumstances.

* The section is as follows:—"Any person other than a candidate found guilty of bribery in any proceeding in which after notice of the charge he has had an opportunity of being heard, shall . . . . be incapable of being registered as a voter, and voting at any election" . . . .

Relief given to voter's child over 16 years old does not vitiate vote. (1) 91.

Mr. Justice BLACKBURN, however, ruled that the vote must be struck off.

It appeared that the son of a voter had been removed to the pauper lunatic asylum under a parish order. At the time of the removal the son was more than sixteen years old.

Mr. Justice BLACKBURN :—"I think what is made relief to the parents is that supplied to their children under sixteen. The vote must stand."

Notice of objection. Objector's place of abode —how stated. 6 Vict. c. 18, s. 17.

It appeared that when the name of one Chillingworth was called before the Revising Barrister a notice of objection had been handed in. The notice of objection, framed under Schedule B (10) of 6 Vict. c. 18, purporting to state the objector's place of abode, had, in fact, stated his actual place of abode at the time of making the objection. But the place of abode thus stated was not the same as that which appeared opposite the objector's name, where he appeared as a voter in the list of voters.

The notice had been objected to before the Revising Barrister on this ground, and had been held bad.

The question was now raised again. It was argued against the notice that it ought to have stated the place of abode of the objector as it had been described in the list which gave him the title to object.

In support of the notice it was contended on the strength of Knowles *v.* Brooking, 2 C. B. 226, that the true place of abode of the objector was that which was required to be stated.

Mr. Justice BLACKBURN held that the notice of objection had been good, and reversed the Revising Barrister's decision.

"Express decision" of Revising Barrister. 6 & 7 Vict. c. 18, s. 98.

It appeared that a notice had been given to one Chillingworth that his name would be objected to before the Revising Barrister. When his name was called, it was contended on the part of Chillingworth that the notice of objection was insufficient, and after hearing an argument on the point, the Barrister decided that it was insufficient; so the objection to Chillingworth's name was not gone into. Notices of objection with precisely the same faults had been given as to a number of other names; and before the

Barrister had given his decision as to the sufficiency of the notice of objection in the case of Chillingworth, his attention was called to the fact that, as notices of a precisely similar description had been given in a great many other cases, his decision in Chillingworth's case would in fact govern them all. After he had decided Chillingworth's case, and as his attention had been already drawn to the fact that there were many others like it, it was not attempted to argue the question again upon them.

The result was, that when the Barrister was calling over the names, and when there was no objection made, he did not in fact know at the time whether it was because a notice which he had already decided to be a nullity had been given in that case, or whether it was because there really was no objection at all.

Amongst these names was that of James Baker. He had voted for the Respondents, and it was now sought, on the part of the Petitioner, to go into the merits of his case, and show that his name ought to have been struck off by the Revising Barrister.

On the part of the Respondents, it was contended this was a case where the Barrister had given no "express decision" within the meaning of the 6 & 7 Vict. c. 18, s. 98.

Mr. Justice BLACKBURN, however, ruled that there had in effect been "an express decision" in this case, and that it was, therefore, open to the Petitioner to enter into the merits of it and to show that Baker's name ought to have been struck off by the Barrister.

Referring to 6 & 7 Vict. c. 18, s. 98, as governing this matter, he said:—

"I consider that, since on matters of law there was an appeal to the Court of Common Pleas, but on matters of fact the Barrister's decision was final, the intention of the Legislature was, that where a matter of fact had been fairly raised before the Barrister, and he had heard it and had come to an express decision upon it, then his decision might be reviewed by an Election Committee (or now a Judge), in order to see that injustice had not been done.

"Now, in the present case, it comes with a rather peculiar sort of express decision. The first case coming before the Revising Barrister, the case of Chillingworth, being upon the overseer's list, would have stood upon the overseer's list, without any decision of

the Revising Barrister at all, unless somebody properly objected to it. If anybody properly objected to it, then the Revising Barrister would have to hear the evidence on both sides and to come to an express decision upon the merits. As was right and proper, it was first necessary to see that there was an objection, and that there was a notice of objection which was good, and consequently the Revising Barrister should have inquired into the merits of the case. The Revising Barrister, after hearing and considering it, came to a conclusion which I must treat as an erroneous conclusion, considering myself, as the superior authority, to be right, and the Revising Barrister wrong. He decided that the notice of objection was bad, when in fact it was good.

"Then the first question is, is that retaining his name by 'an express decision?' If the Barrister had been right in saying that the notice of objection was bad, the name could not have been removed from the list at all; but when he, upon this preliminary point, decides that he will not enter into the merits at all, and erroneously decides so when he ought to have entered into them, I think we must consider it as 'an express decision' retaining the name, and consequently enabling me to enter into the merits. It would not follow from that, that Chillingworth's was a bad vote, and should have been struck off, but only that I have the jurisdiction to inquire whether it was a good vote or not. Then, after that had been decided, I have to see whether or not, his not entering into the merits of Baker's case was in consequence of his 'express decision' that the notice of objection in Baker's case was insufficient. Now, upon the facts that have been established before me, I can come to no other conclusion than that it amounts in point of law to just the same as if his decision had been given over again as to the notice in Baker's case. Therefore I must take the notice in Chillingworth's case to be a decision which applies to govern all the subsequent cases in which the point was the same."

Upon the Petitioner having placed himself in a majority of eight,— (2) 152

Mr. Serjeant *Ballantine*, for the Respondent, said that after his Lordship's decision in Baker's case,* he could not advise the

* Vide supra.

Respondent to contest the seat any further, and that having satisfied himself that the counter-charge of bribery against the Petitioner could not be established, he should, with the permission of the Court, withdraw the charge.

Leave was given to withdraw the counter-charge of bribery against the petitioner, and,—

Mr. Justice BLACKBURN added as follows:—"The counter-charge having been withdrawn, there is nothing further to say beyond this, that the Petitioner has proved himself in a majority. I therefore find that the Petitioner has a majority of votes, and that he was duly elected for the borough of Bewdley.

Costs. As to costs, he said:—

"In this, as in other cases, the costs follow the usual course, and will be borne by the Respondent."

CASE XXIV.

BOROUGH OF TAUNTON.

BEFORE MR. JUSTICE BLACKBURN, MARCH 5, 1869.

Petitioners: Messrs. Williams and Mellor.

Respondent: Mr. Serjeant Cox.

Counsel for Petitioners: Mr. Serjeant Ballantine and Mr. J. O. Griffiths.

Agents: Mr. Hoskins and Messrs. Reed and Cook.

Counsel for Respondent: Mr. Rodwell, Q.C. and Mr. Collins.

Agents: Mr. Jacquet and Mr. Trenchard.

THE petition contained the usual allegations of bribery, &c., and prayed the seat, upon a scrutiny, for Mr. James.

The principal charge of the petition related to what was called "barristers' court money," said to have been given by a Conservative Association to voters who attended the registration court, nominally on account of loss of time, but really with the object of influencing their votes at the then approaching election.

In the course of the case,

It was proved that there had been formed in the borough a body called "The Conservative Association," for the purpose of conducting the registration in September and the election which followed in November. That the association had funds deposited in a bank which they drew upon from time to time by means of cheques signed by two of their members. That during the election people met at the room of the association, that papers and circulars were sent out from it, that the association canvassed actively and

Responsibility of candidate for political association.

Colourable payment to voters for registration expenses.

did all those things which would commonly be done by a committee for promoting an election, and that they did them openly and during a considerable time. That at the time of the registration the agents of the Respondent were aware of the association, and acted in concert with it, sending circulars and causing circulars to be printed which the association paid for. That both the Respondent and his agents knew that the association was actively canvassing in the Respondent's behalf. That about the first week in November—long after the registration, and shortly before the election—the association gave 5s. a-piece to a number of voters who had attended the registration in September, as a day's pay for their loss of time in so doing. That this sum was practically paid to everyone who would come forward and ask for it, and without any precaution being taken to ascertain whether those who thus received the money had done anything for it.

Upon this the Petitioners contended,

1. That the association must be taken, in the absence of proof to the contrary, to be the agent of the Respondent.

2. That those who gave the money were guilty of bribery.

3. That those who received the money were guilty of bribery.

Mr. Justice BLACKBURN in his judgment said as to the first point,

"The rule of law has long been established that in parliamentary matters we are not to consider the strict rule of common law agency generally established to this extent, that a person is responsible for his agent in all that he does within the scope of his authority, but is not responsible for anything that he does beyond the scope of his authority (the case of the sheriff being the one exception), so that the common rule of law would be that if you employed a man to do an honest thing, and he chose to commit a crime, you would never be responsible criminally, nor even civilly, for the crime committed, when the instructions you gave him were to act as an honest man. But in parliamentary election law it has long been established that where a person has employed an agent for the purpose of procuring his election, he, the candidate, is responsible for the act of that agent in committing corruption, though he himself not only did not intend it or authorize it, but even *bonâ fide* did his best to hinder it."

Having recapitulated the facts as stated above, he continued as follows :—

"When things are thus openly done, which would not be done in the ordinary course of things, except with the cognizance of a candidate who sanctioned them, the natural inference in the absence of proof to the contrary would be that they were done by a person acting as agent for the candidate. It would not be at all conclusive. The Respondent and his agents might have shown that they had had no communication with that body, that they repudiated it, and if that repudiation was *bonâ fide*, they would not have been responsible for its acts. The Respondent might have shown that a body acting in such a way as this body acted, was acting officiously for him, as I may call it, that it was not with his consent and was against his will: but the presumption does arise, I think, that it was done in his favour, done for him, unless there be something to show the contrary. I think in this case such a degree of benefit was derived from their assistance, that their assistance was so important to the candidate that it fairly establishes this, that if he took their assistance and did not hold them off or repudiate them, he must abide the consequences and be responsible for their malpractices."

As to the second point, he said :—

"The matter differs from what it would have been if there had been a payment given to persons for their loss of time in attending at the election itself, which was the Devonport case.* There can be no doubt that such payments when given to a person for loss of time in coming to deliver his vote are payments for voting, and are distinctly struck at by the words of the section, 2 (2), 17 & 18 Vict. c. 102. But when the payment is given for an attendance at the Revising Barrister's court it is not within the express terms of the Act. It may well be that there should be a payment for an attendance at the Barrister's court which should be *bonâ fide* for that purpose and no other, and which is not meant by the Act of Parliament. I think where it was *bonâ fide* it would not be a bribe, but if it was intended to induce a vote (which would be a matter to be collected from the whole of the facts) it would be a bribe."

* *Semble*, the Liverpool case, 2 P. R. & D. 248.

After reviewing the evidence, and stating that the question then was as to what conclusion must be formed of the motives of those who advanced the money, he said there could be no doubt that the object was to induce persons to vote at the election.

As to the 3rd point, he said :—

"It may be, as a matter of fact, that a person gives money to all voters who would come forward and ask for it, saying, 'This is paid for your loss of time at the Revising Barrister's court, and I will pay money for loss of time at the Revising Barrister's court to every voter who will come forward for it,' having the full intention thereby to induce the voter to vote on his own side, and yet it may so happen that the voter who comes forward and receives that money comes forward honestly and *bonâ fide*, because he believes he is entitled to the money for his loss of time. If he honestly and *bonâ fide* comes forward in that way, I do not, as at present advised, think it would be bribery on his part within the meaning of 17 & 18 Vict. c. 102, s. 3 (1). It is a question of fact, and where a person comes forward to receive money which is given as a bribe, the general rule of evidence which applies to all such cases would lead one strongly to conclude that the person took it as a bribe, though it by no means follows as a matter of law that it would be so." He concluded by saying that if these were gone into it would be necessary in the interests of the constituency to take each individual case by itself.

Mr. Justice BLACKBURN in his judgment declared the Respondent unseated on the ground of bribery.

Liability of candidate for acts done by agents.

As to the liability of candidates for acts done by their agents, he said :—

"The rule of parliamentary election law, that a candidate is responsible for the corrupt act of his agent, though he himself not only did not intend it or authorise it but *bonâ fide* did his best to hinder it, is a rule that must at times fall with great hardship upon particular persons. But I may just mention the considerations which no doubt led the common law, as I may call it, of Parliament to establish it. Corruption, as we all know in practice and in fact, is seldom or never done by the hand of the candidate. The two modes in which it was found in practice that corruption

was carried on were these: persons were put forward to do all the work of canvassing and conducting an election, and these persons acted corruptly, but the candidate purposely kept himself out of the knowledge of anything about the matter so that he might have the full benefit of their services, and were it not for this rule which has been established he would not suffer for their misdeeds. That is one of the great reasons. Another great reason would be that no doubt people were put forward as to whom the candidate was carefully kept from knowing they were spending any money or doing any thing, with the notion, according to the loose morality that prevailed in election matters, that when the time for petitioning was past those persons might come to him and say, 'I did spend that 1000*l.* for you upon the election; of course I did not tell you about it, or say a word about it at the time, but now you are bound in honour to repay me that 1000*l.* of which you had the benefit,' and which in point of fact the candidates did feel themselves bound in honour to pay. This, therefore, was another reason for the parliamentary law declaring that the candidate should be responsible for the act of his agent."

As to the definition of agency, he said:—

Definition of agency.

"What is the definition of agency for which the candidate would be responsible? what relation between the candidate and the person who is shown to be guilty of a corrupt practice would be sufficient to make the candidate responsible for that person's corrupt practice? I am not able at present (and I rather doubt if in the nature of things it is possible) to say. I think all one can do is this, to say that wherever a person is in any way allowed by a candidate or has the candidate's sanction to try to carry on his election and to act for him, that is some evidence to show that he is his agent. I think that we cannot come further (at least I have not been able to come further) than to say this. If in the ordinary course of things I had a jury to find the facts, I being a judge of the law, the direction I should give the jury would be to say, 'All this is some evidence of agency; what I must say to you is to point what I consider the reasons that have led to the law being established in this way. In the present case the particular consideration would be whether or no the agent has been doing so much for the candidate, whether there was so much *commodum* done that it

would be just (using the Latin phrase quoted by Mr. Rodwell) to impose the *onus* upon him. I think I could not define it better than that I should say to a jury, 'It is a question of more or less, it is the extent to which it goes. If there is evidence to show that the party is acting for the member who is returned, then I think one should consider him to be an agent, if, taking the spirit and object of the rule, you think bringing your common sense to bear upon it that he was substantially an agent.' I think that is all I should say to a jury; and then as the Legislature have thought fit to make me both Judge and jury, I must apply that guide as best I can myself. I at once see the great inconvenience of such a rule as this being laid down. If that be the proper guide to be taken the law must be very uncertain. It is an old observation of Selden in his 'Table Talk' upon Equity as then administered, when there were no fixed rules but according to the conscience of the Chancellor, that equity necessarily is as uncertain as a measure of length in which the standard for the measure was made the Chancellor's foot;* a remark with strong sense in it, and no doubt as applicable to the substantial common sense of an Election Judge as it was to the conscience of the Chancellor in those days. But I have been unable, after the best consideration I have been able to give to it, to devise any better rule."

As to the scrutiny, he said :—

Question to be decided upon the scrutiny.

"The further question as to whether or not Mr. James should have the seat would depend upon the result arrived at after going through the individual votes, and seeing, without regard to who it was that corrupted this man or that, what was the majority of uncorrupted voters, and whether there was a majority for anyone who had not rendered himself by personal misconduct incapable of standing."

At the conclusion of the judgment,

Mr. *Rodwell* stated that after his Lordship's plain language with reference to those persons who were said to have received the money in respect of services not done, it would be waste of time to oppose Mr. James putting in at once a number of voters to give

* Selden's "Table Talk," ed. 1856, by Singer, p. 49.

him a lawful majority. He proposed at once to strike out those votes which came within the terms of the judgment.

Mr. Justice BLACKBURN assenting,

Mr. *Rodwell* admitted 16 votes bad on the ground of parochial relief and non-residence. Mr. James was thus placed in a majority.

Mr. Justice BLACKBURN then stated that his certificate would be that the Respondent was unseated, and that Mr. James ought to have been and should now be returned.

Mr. Justice BLACKBURN said, as to costs,—

"As the petition has succeeded, costs must be paid by the Respondent." Costs.

CASE XXV.

BOROUGH OF WIGAN.

BEFORE MR. BARON MARTIN, MARCH 6, 1869.

Petitioners: Messrs. Brayshay and Atkinson.

Respondents: Mr. Henry Woods and Mr. John Lancaster.

Counsel for Petitioners: Mr. Hardinge Giffard, Q.C.; Mr. Leresche; Mr. Poland.

Agents: Mr. Mayhew and Mr. Ackerley.

Counsel for Respondents: Mr. Serjeant Parry; Mr. Murphy.

Agents: Messrs. Leigh and Ellis.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It was proved that one Wilcock, who had been employed by a society in the town called "The Liberal Association," to which the Respondents among other people, had contributed, had corruptly paid the rates of a voter. The evidence, however, failed to establish that Wilcock was acting as an agent of the Respondents, or that they were liable for his wrongful act.

Evidence was given to prove intimidation on the part of the manager of the Wigan Coal and Iron Company, but it failed to establish any case.

The evidence also as to sundry acts of bribery proved to be wholly insufficient.

In the course of the case:—

Upon one Gallagher being called as a witness to prove that he had been bribed,

Name of persons bribed not in particulars, amendment. (2) 1.

Serjeant *Parry*, for the Respondents, objected that his name was not in the particulars delivered pursuant to an order made by Mr. Justice Willes.

Mr. *Giffard*, for the Petitioners, submitted that in the Bewdley case,* Mr. Justice Blackburn had allowed the particulars to be amended without a summons being taken out, and that Mr. Justice Willes had done the same thing in the Penryn case.†

Mr. Baron MARTIN said that if it was not in the particulars he could not help them; he could not allow the particulars to be amended except on a summons supported by an affidavit stating how the name of this witness had come to be omitted.

The witness then withdrew.

Members of a political society not responsible for each other's acts in the same way as partners are.

Corrupt payment of rates by an employé of respondent.

Effect upon respondent unless express authority from respondent to do so is proved.

It was proved that a society, called "The Liberal Association," had been formed in the borough, with a view of promoting the interests of the party. The Respondents, as well as a number of other gentlemen of similar political opinions, contributed to it. The manager of the association was one Stewart. Stewart, as such manager, had employed one Wilcock to attend to the registration, or to be, as he was called, Objector-general for the Liberal party before the Revising Barrister. Wilcock corruptly paid the rates of a voter. He did this quite on his own responsibility; Stewart had not in any way, directly or indirectly, authorised him to do so, and he did not in fact know, till he was called upon by one of the agents of the Petitioners, that it had been done.

Upon these facts, Mr. *Giffard*, for the Petitioners, contended that this association was in the nature of a partnership, and that any act done by Stewart would bind all the subscribers to the association, and among them the Respondents, who would thus be directly responsible for Stewart's appointment of Wilcock, and so liable for Wilcock's corrupt act.

Mr. Serjeant *Parry*, on behalf of the Respondents, contended that no agency had been proved; and further, that upon the true

* Vide ante, page 16. † Vide ante, page 127.

construction of 30 & 31 Vict. c. 102, s. 49,* the doctrine laid down with reference to 17 & 18 Vict. c. 102, viz., that a candidate is responsible for the improper act of his agent, although he may have not only not authorized him to do that act, but may have expressly forbidden him to do it, did not apply to the case of corrupt payment of rates, and that in order to make a candidate responsible for the corrupt payment of the rates of a voter, it must be proved that the candidate expressly authorized that corrupt payment.

Mr. Baron MARTIN in his judgment said as to this :—

"It has been argued by counsel for the Respondents that upon the true construction of 30 & 31 Vict. c. 102, s. 49, the doctrine laid down with regard to 17 & 18 Vict. c. 102, s. 2, does not apply; and that is rather my own impression. I do not mean to give an opinion upon it, because it is unnecessary in this case. The circumstances of the case are these: There is a body in the town called the Liberal Association, and for the Petitioners it is contended that the persons who subscribed to that association are in the nature of a partnership, and that the giving funds to Stewart for the purpose of enabling him to carry on that association made him their agent, so that acts done by him would be obligatory upon them, and that they would be bound by them. From that view I dissent. There is no similarity to a partnership. There was given to the body the collective name of the Liberal Association, but the only person acting is Mr. Stewart. The Respondents and other gentlemen agreeing with them in politics contributed to it; but this does not make Mr. Stewart their agent so as to bind them by his acts either criminally or civilly, any more than the manager of a club to which a gentleman may belong could make him responsible for the acts of that manager. The case of *Limpus* v. *The*

* Any person, either directly or indirectly, corruptly paying any rate on behalf of any rate-payer for the purpose of enabling him to be registered as a voter thereby to influence his vote at any future election, and any candidate or other person, either directly or indirectly, paying any rate on behalf of any voter for the purpose of inducing him to vote or refrain from voting, shall be guilty of bribery, and be punishable accordingly; and any person on whose behalf, and with whose privity such payment as in this section mentioned, is made, shall also be guilty of bribery and be punishable accordingly.

*General Omnibus Company** has been referred to. That case was governed by the law applicable to the relation of master and servant, which is different from that of principal and agent. The relation of master and servant imposes upon the master a liability for an unlawful act done by the servant in the course of his employment, and notwithstanding a prohibition which may have been given to him by the master. But the ordinary rule with regard to principal and agent is that the principal is only responsible for that which he authorises the agent to do, and in all other cases of which I am aware, except these parliamentary cases, where you have a man who is sought to be made liable upon the acts of his agent, the question is, did the principal give the agent authority to do the act? If that be negatived the principal is not responsible, the rule of law being that if a man acts through an agent, he can only be held responsible to the extent of the authority he gives the agent. In my opinion, as at present advised, it would be necessary, in order to establish that a person had corruptly paid a rate for another, when the rate was in fact paid by a third person, to show that that third person was authorised by the person sought to be charged to pay the rate. The enactment is that any person corruptly paying a rate on behalf of a ratepayer for the purpose of enabling him to be registered is guilty of bribery; and my present opinion is, that in order to make a third person responsible for that act, you must prove that he gave authority to the person to do that act. However, it is not necessary for me to express an opinion upon that. I have pointed out what, in my judgment, is the difference between a partnership and the Liberal Association, and that there is no partnership privity between the parties subscribing, and no relation of principal and agent. In fact, Mr. Stewart is the Liberal Association, unless so far as the subscribers personally interfere, when of course they would be responsible for their own acts. Wilcock was the person employed by Stewart to attend to the register, or to be the Objector-general, as he was called; that gave him no authority to bind Stewart by an act of bribery, and if Stewart had been indicted for the misdemeanor upon the assumption that what

* 1 H. & C. 526.

Wilcock did was bribery, I do not believe that any Judge would upon the evidence before me, allow the case to go to the jury. There is no evidence against Stewart, and much less is there any evidence against the Respondents. In my judgment, subscribing to the fund for the purpose of having the registration attended to in the borough, whether it be a Conservative or Liberal Association, does not make the subscribers to that fund partners, and does not confer any authority upon the person who manages it to make them responsible for an illegal act that may be done by the manager. I think, therefore, that the case against the Respondents fails so far as regards the payment of rates."

Mr. Baron MARTIN, in his judgment, declared the Respondents duly elected.

How far honesty of candidate affects evidence of acts of agents.

As to the principle on which a Judge should act in trying a petition alleging corrupt practices, he said:—

"If I am satisfied that the candidates honestly intended to comply with the law and meant to obey it, and that they themselves did no act contrary to the law, and *bonâ fide* intended that no person employed in the election should do any act contrary to the law, I will not unseat such persons upon the supposed act of an agent, unless the act is established to my entire satisfaction. Things may have been done at an election of which I do not approve—for instance, having committees at public-houses, hiring a number of carriages (which now in borough elections is prohibited), or hiring roughs,—but which do not of themselves avoid an election. They are ingredients which may be taken into consideration, and they may tend to show what was the real quality and meaning of an ambigious act, which may have one effect or another according as the Judge's mind is satisfied that it was honestly or dishonestly done. It may be that at an election certain acts have taken place which the Judge disapproves of, but which do not satisfy him that another act upon which the validity of the election depends was corruptly done. But if, upon a future petition arising upon another election in the same place, acts similar to those of which the Judge had expressed his disapproval were proved to have been repeated, the Judge who tried the second petition might well take them into consideration to aid his conclusion that the act upon

which the validity of the election depended was a corrupt and dishonest act."

As to costs, he said:—

"The costs will follow the event. So far as the corrupt payment of rates is concerned it was an experiment, and that is a case in which the Courts uniformly give costs. Upon the other grounds the petition has signally failed, and therefore the costs ought to follow the event." Costs.

CASE XXVI.

BOROUGH OF HEREFORD.

BEFORE MR. JUSTICE BLACKBURN, MARCH 9, 1869.

Petitioners: Thomas and others.

Respondents: Messrs. Clive and Wyllie.

Counsel for the Petitioners: Mr. Price, Q.C., Mr. Dowdeswell, Q.C., Mr. G. Brown, Mr. Cleave.

Agents: Messrs. Jones and Starling.

Counsel for the Respondent Clive: Mr. Powell, Q.C., Hon. E. Chandos Leigh.

Agent: Mr. G. J. Durant.

Counsel for Respondent Wyllie: Mr. Serjeant Parry, Mr. Rathbone.

Agent: Mr. R. H. Wyatt.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It appeared that a breakfast was given by one Harrison on the morning of the polling day, to which any one who liked was invited to come and have drink; breaks and vehicles were also provided at Harrison's house, in which the people who came there were carried to the poll. It was proved that all this was done for the purpose of influencing the election. Harrison's agency was not established by any one specific fact, but it appeared that voters were invited and brought to this breakfast by several of the Respondents' committee men; that Harrison himself went canvassing on one occasion in company with one of the principal agents of the Respondents, and that on another occasion he himself, at the request of another of the Respondents' agents, can-

vassed two voters; that after the election was over he was thanked for his services in letters from the Respondents themselves. This was held sufficient to constitute agency.

In the course of the case,

Upon Mr. *Price*, for the Petitioners, stating that he was about to go into the case of one Hughes, whose name was not in the particulars, and upon objection being made on the part of the Respondents,

Where name not in the particulars, case postponed. (1) 186.

Mr. Justice BLACKBURN said he would not allow the case to be gone into that day, but that it might be taken on the next day.

Mr. Justice BLACKBURN, in his judgment, declared the Respondents unseated on the ground of corrupt treating by their agents.

On the question as to agency, he said:—

Agency.

"There is always a great difference in my view in the degrees of agency. As you go lower down you require more distinctly to show that the act was done by a person whom the candidate would be responsible for. As you come higher up it is more as if the candidate had done it himself. Also, for such a purpose as fixing a candidate for the chaffering for a vote not actually carried out, you require more complete evidence of agency than you would require for an offer actually executed."

Mr. Justice BLACKBURN commented upon the reasons why the parliamentary law of agency differed from the common law of agency. His remarks were substantially the same as those made by him a few days before in the Taunton case.*

On the question of treating, he said:—

Meaning of the word "corruptly."

"The terms of the Act of Parliament regulating treating are clear and distinct. 'Every candidate at an election who shall corruptly (the word "corruptly" means contrary to the intention of this Act, with a motive or intention by means of it to produce an effect upon the election), by himself, or by or with any other person . . . . directly or indirectly, give or provide, or cause to be given or provided, or shall be accessory to the giving or providing, or shall pay wholly or in part any expenses incurred for

* Vide ante, page 184.

any meat, drink, entertainment, or provision to or for any person in order to be elected, or for being elected, or for the purpose of corruptly influencing such person, or any person, to give or refrain from giving, his vote,' shall be deemed guilty of treating. Now in that case, as well as in others, a candidate is responsible for the acts of his agents when they are so far agents that what they were doing they have been employed or authorised by him as agents to do: he is answerable for their corrupt acts, although he may be no party to them."

As to costs, he said :—

Costs. "As a general rule I have in every case considered that the costs of the election ought to abide the result. As a general rule that is right, and that is particularly right where the Petitioners have been successful in avoiding an election, and have therefore done a public service. But in this particular case there is a reason why I think I cannot do it. In making the rules we had this before us, that it was the very essence of justice and fair play that every man, who was accused of anything, should have due and sufficient notice of what it was that he was accused of, and of that only, so that his attention should not be distracted to immaterial matters. For that purpose we have established the practice that particulars should be given, stating what it is the Respondents will be required to meet. Those particulars were not required to be given long before. Three days before the time came, the other side might know what they were to meet, so that they might then be prepared to meet the case, and might not waste time and trouble in hunting up different matters, on which the Petitioners did not rely, the object being, as I have already pointed out, partly to secure fair play, and partly the saving of the waste of costs. And a very important further matter is that, fifteen working days' notice of trial having been given, and it not being required till the twelfth of those had gone by that the Petitioners should give those particulars, they should make use of those twelve days in ascertaining and sifting their evidence, that they should really conduct the case as we do in an ordinary trial with as much as can be done towards fair play and precision.

"These being the objects, and the particulars being required for those objects, how have they been complied with here? One

hundred and eighty-four cases of bribery have been put down, which the Respondents must have had to look into. Of those there are five on which evidence has been given, and of those five the Petitioners have not succeeded in establishing one to my satisfaction. There are five cases that have come to nothing, with one hundred and eighty-four charges in the particulars. It is obvious that that could not have been done except for the purposes of baffling the objects of giving the particulars, and it is obvious that it must have given the Respondents a great deal of unnecessary trouble. It is justice to the Petitioners to say that, although I have not known quite so gross a case as this before, yet generally the particulars have been used very much as if they were intended to give no information at all; and the only way to check that is to say, that where that is done we shall follow the spirit of the Act of Parliament, which says * that the costs shall be in the discretion of the Judge, who shall direct how they shall be allotted, bearing in view whether or no there has been useless expense and vexation caused. That is the meaning of the Act. That being so, I can only say that though here the Petitioners have succeeded, I do not think it would be right to make the Respondents bear their costs. The Respondents having failed will not get their costs. In this particular case, and under the particular circumstances, I direct that each side bear their own costs."

* Parliamentary Elections Act, 1868, s. 41.

CASE XXVII.

BOROUGH OF BLACKBURN.

BEFORE MR. JUSTICE WILLES, MARCH 12, 1869.

Petitioners: Messrs. Potter and Feilden.

Respondents: Mr. Hornby; Mr. Feilden.

Counsel for the Petitioners: Mr. Digby Seymour, Q.C.; Mr. R. J. Biron; Mr. Marriott.

Agents: Messrs. Merriman and Pike.

Counsel for the Respondents; Mr. Serjeant Ballantine; Mr. Leresche; Mr. Gorst.

Agents: Messrs. Ridsdale and Cradock.

THE petition contained allegations of bribery, treating, and undue influence.

The 5th clause alleged that the Respondents "were by themselves, their agents, friends, and managers guilty of unduly influencing voters to vote at the election, and have committed the offence of undue influence within the meaning of the Corrupt Practices Prevention Act, 1854;" and the 6th clause, "that notorious and systematic corrupt and unlawful practices were carried on at the election by the agents, friends, and managers of the Respondents."

The petition did not pray the seat.

The charges of bribery and treating were abandoned.

In support of the charges alleging undue influence, it was proved that in several Tory mills in the borough all the workmen who

ventured to express liberal opinions, or who declined to vote at municipal elections for the Tory candidates, were just before the parliamentary election in some instances driven out from the mills, and prevented from continuing their work by their fellow-workmen, the masters looking on and not attempting to interfere in their behalf, and in other instances discharged by their masters. A little while previous to these acts of oppression, a circular had been sent round by an association (which the candidates afterwards adopted in place of a committee) to every "manager, overlooker, and tradesman and any other person having influence" in the town, requesting them to "secure in the municipal elections as well as in the parliamentary, the success of the candidates who adhere to the constitution in church and state."

In the course of the case,

When seat not claimed, evidence exculpatory of petitioner's party not admissible. (2) 230.

It having been proved on the part of the Petitioners (who were Whigs) that workmen had been dismissed from certain Tory mills because of their political opinions, a witness was asked in re-examination :—

Q. "Do you know of your own knowledge of any man being turned out of Spencer's mill (which was a Whig mill)?"

A. "No men were turned out."

Q. "Did Spencer take any public step to prevent anything of that kind happening?"

A. "Yes."

Q. "Did he put up a notice in his mill on the subject?"

A. "Yes."

Mr. Serjeant *Ballantine*, for the Respondents, objected to the Petitioners putting in evidence of this kind, and submitted that if it was admitted he was entitled to go into a recriminatory case.

Mr. Justice WILLES said that inasmuch as the seat was not claimed, the Respondents had it not in their power to set up a recriminatory case. He was, therefore, of opinion that the Petitioners had no right to commence by proving that their party was innocent of something of which they were not accused. If, however, in the course of the Respondents' case anything should be thrown out against the character of any particular mill-owner upon the Whig side, he would permit that mill-owner to come forward

and give any explanation he liked, not as a witness, but merely with a view to fair play.

But, if the evidence was offered for the purpose of proving that certain means had been taken by certain Whig mill-owners which had had the effect of pacifying their hands, and that, therefore, one ought to conclude that the same means if taken by the Tory mill-owners would have had a similar effect upon their hands, that was, in his opinion, too vague an inquiry to go into.

Liability of respondents for acts of a political society adopted by them in place of a committee.

It was proved that on the 12th of October, that is about a month before the election, a circular was issued by an association in the town called the Conservative Association, addressed to "every manager, overlooker, and tradesman, and any other person having influence" in the town of Blackburn, requesting them to "secure in the municipal elections as well as the parliamentary the success" of the Respondents; and it went on to say, "we venture to urge upon you most strongly the necessity of vigorous personal effort to secure the return" . . . . of the Respondents. This circular was afterwards adopted by the Respondents, and the association which had issued it was adopted by them in place of a committee for the management of the election.

Mr. Justice WILLES, in his judgment, said as to this :—

"This circular must be taken as being the act of the Respondents just as much as if each of them had written a letter to this effect to every "manager, overlooker, and tradesman, and any other person having influence" in the town. It is a power of attorney to the extent to which it goes to every individual in any of those classes to do that which the circular requests him to do. It must be looked to, I think, as the foundation of authority and agency, such as existed in the election. Of course it would be prodigious to say that it at once made every overlooker in the place an agent of the Tory candidates. That would be quite out of the question, because if it were so it would follow in strictness of law that they would be equally answerable for the acts of the overlookers of the opposite way of thinking, or that they would be liable to be unseated for acts done in bad faith by some person who pretended to be an agent of theirs for the purpose of betraying them by doing acts which might eventually invalidate the

election. But it appears to me that its effect was to make an agent of every person having authority down to the last grade, that of overlookers over the hands, and to request, and therefore authorise, each such to influence the hands who were under him for the purpose of inducing them to vote for the candidates upon whose behalf this document was issued, and any overlooker, and consequently anybody in that or any higher grade, who *bonâ fide* took up the Tory side, and who acted upon the circular and did canvass for the Respondents, became their agent, and his acts did bind them."

Mr. Justice WILLES, in his judgment, declared the Respondent unseated on the ground of intimidation by agents, as charged in the 5th clause of the petition.

As to the 6th clause, he said:—

Meaning of the charge of "notorious and systematic corruption."

"It was suggested by the petition that undue influence and intimidation of the description charged had extended (because so I must read the general clause with which the petition concludes, the 6th clause) to such a length as to be general, and that the election ought to be declared void upon the ground of general corruption —whether in the shape of the abandoned charges (those of bribery and treating) or of the charge adhered to (that of undue influence)—extending to such a body of persons in the borough that, quite apart from any influence of members or their agents, there was no freedom of election here."

He then went on to state that this charge of general corruption had not been substantiated.

As to the law relating to agency, he said:—

Law as to bribery by agents explained.

"Nothing can be clearer than this law; it has existed for a very considerable period, I believe certainly from as early as the time of James I. Some 265 years ago the general principle was laid down upon the first and only occasion upon which the jurisdiction of the House of Commons over parliamentary elections was seriously questioned,* and upon which occasion it was confirmed. And it is enacted and settled as the law by the Corrupt Practices Prevention Act of 1854, s. 36, which, to my mind, does no more than lay down in very distinct terms that which has been always

* Goodwin's case, 2 State Trials, 91.

the understood law of Parliament, or rather the common law of the land, with respect to the election of Members of Parliament; that is to say, that no matter how well the Member may have conducted himself in the election, no matter how clear his character may be from any imputation of corrupt practice in the matter, yet if an authorised agent of his, a person who has been set in motion by him to conduct the election, or canvass voters on his behalf, is in the course of his agency guilty of corrupt practices, an election obtained under such circumstances cannot be maintained. As it has been expressed from early time, no person can win and wear a prize upon whose behalf the contest has not been legitimately and fairly carried on, or, as it was expressed upon the occasion to which I refer, *non coronabitur qui non legitime certaverit*, which is only so much in Latin showing the antiquity of the principle which I have already expressed in English; and whether it be that the person who contends in respect of any unfair play of his own, whether it be the owner of a horse in respect of the unfair play of his jockey, whether it be the owner of a ship in respect of the fault of his steersman, or the hoisting of an additional sail against the rules of the race by one of the seamen; or whether it be a candidate in a parliamentary contest in respect of his agent, in every one of those cases, whether it has been the principal who has been guilty of illegality, or whether the illegality has been committed by his agent only, even without his authority or against his will, provided it be done in his agency and for the supposed benefit of his principal, such principal must bear the brunt, and cannot hold the benefit in respect of that in which the agent has compromised him, and would in a matter of this description have also betrayed the public, who have a right that a just election shall be had. The amount of the injury done by the agent, if the injury has been done of the character which I have described, is immaterial. If an agent bribe one voter with 2*s.* 6*d.*, and that voter votes for the candidate, election void. If an agent bribe one voter with 2*s.* 6*d.*, and the voter taking the 2*s.* 6*d.* with purpose, express or implied, of voting accordingly, should break his promise, and vote for the other side, election still void. Although the result of the bribe was nothing as to the poll, the result was in point of law that an illegality of so gross a character and so difficult to trace would have

been committed, that no election would be safe, no community would be sure but that elections were gained by the exercise of corrupt practices, unless, for the sake of all, the election in which an agent has been guilty of such a malpractice were held void as against the principal of that agent. It is not by way of punishment to the principal that the election is held void, it is not because the majority has been swayed or even affected by the malpractice that the election is held void, but it is because malpractices designated as corrupt by the common law and by the Legislature in the Corrupt Practices Act, are so odious and are so dangerous, that it is thought better to hold void an election where either such practices have generally prevailed, whether traceable to a Member or his agents or not, or where a single instance of such corrupt practice has been distinctly traced to the Member or to an agent of the Member."

On the subject of intimidation by dismissal from employment, he said :—

Dismissal on ground of political opinions, indirect influence, evidence.

"Is it undue influence within the meaning of this fifth section to discharge servants who have votes on the eve of a parliamentary election upon the ground of their politics differing from their masters? It has been argued by my brother Ballantine that with respect to a person so sent away, he is sent, so to speak, into the enemy's camp; he is not influenced directly, he is sent from influence; it is only made worse for him that he has been of a certain political sect. He is sent away; and it might be said that all idea of influence is removed, because he is not only sent away into the enemy's camp, but he is sent away angered by the ill-treatment he has received; he has been persecuted, and therefore he is more likely to crown his martyrdom by voting for the other side. Therefore it is said no harm is done, and there has been no violation of section 5 of the Corrupt Practices Prevention Act. Well, that may be so in an individual case. A good deal would depend upon the circumstances, for instance, as to whether the injury inflicted upon him was an injury which would make him likely to change his mind in order that he might be taken back into the service of the person who discharged him; or that he might be taken, notwithstanding that discharge, into the service of some other person of the same political opinions as the master who

had dismissed him. But the matter is not at all concluded here, because the section says that the undue influence which is reprehended by it shall not be practised, whether directly or indirectly; and it is not because the one man who may be shoved or hooted, or pelted with mud, or dismissed from his employment on account of his political opinions, may, if he is a man of independence, be only the more fortified in them, and only be influenced against the persons who ill-treated him, that therefore no influence is exercised upon other persons of the same class. On the contrary, whilst the strong-minded would be influenced against the intimidation, the weak-minded and the waverers, whether in the same employment or in others under like circumstances, would, or might be deterred. That they might be deterred is sufficient. I conceive it to be clear that the 'practice of intimidation' mentioned in the fifth section is a phrase carefully used to avoid the sort of quibble which persons who are not lawyers suppose has arisen in cases of highway robbery, where the indictment used to contain the words 'putting him in fear of his life,' and the prosecutor a brave man, being asked, 'On your oath, were you in fear of your life?' replied, 'On my oath, I was not.' In order to prevent the possibility of any quibbles of that kind the Legislature in the fifth section uses language which makes it undue influence to practise intimidation directly or indirectly with intent to influence the vote of a single voter. Whether the voter be the person ill-treated, or whether the ill-treatment be violence or damage done by the removal of custom or business, or employment, is immaterial. If it is done with a view to affect votes, or interfere with the free exercise of the franchise, it is within the prohibition of the fifth section. I think, therefore, that the proper answer to the question which I have put is that the wrongful dismissal by an employer of a voter or voters from his employment shortly before the general election, upon the ground of his political opinion, is evidence of intimidation within the fifth section."

As to dismissal, partly on political and partly on other grounds, he said:—

Motive for dismissal. Intimidation.

"Another question arises as to the dismissal of workmen by their masters immediately before a parliamentary election, and that is this: where an employer has a mixed motive for dismissing his

man, where he has a reason for getting rid of him apart from his politics, is the employer bound, in point of law, to abstain from getting rid of him merely because of the general election coming on? Well, I think that in point of law as an abstract question, he is not bound to abstain. But I think any sensible man or sound lawyer advising him would say, 'You may do so, but take care how you do so, because unless you prove clearly that you have a good ground for discharging your servant apart from the political one, it is inevitable that your discharge of him will be imputed to your dislike not of the man himself, but of his politics.'"

As to costs, he said:—

"One matter to decide is whether I ought to condemn the Respondents in the costs of these proceedings. In determining that, it was my duty to examine the course which the proceedings have taken, and I found that in these proceedings charges have been made of a very extensive character, both against the borough of Blackburn and against the sitting Members, especially as to the Respondent Hornby personally, which have wholly failed. These charges constituted a great portion of the staple of the petition; they were alleged, and persisted in up to a late moment, and they were in part only withdrawn, and certainly not withdrawn in a manner that I could have desired when the petition came on. There was no ground whatever for having made them; and taking into consideration all the circumstances under which the unfortunate transactions occurred, I have come most clearly to the conclusion that the case is an exceptional one with respect to costs, and that I ought not to make an order with respect to costs on either side." Costs.

CASE XXVIII.

BOROUGH OF KING'S LYNN.

BEFORE MR. BARON MARTIN, MARCH 16, 1869.

Petitioners: Messrs. Armes and Holditch.

Respondent: Hon. R. Bourke.

Counsel for the Petitioners: Mr. Serjeant Parry ; Mr. Kenelm E. Digby.

Agent: Mr. Beard.

Counsel for the Respondent: Mr. H. Giffard, Q.C. ; Mr. McIntyre.

Agent: Mr. Henry Smith.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

The evidence in support of the petition failed altogether to establish a case.

In the course of the case :—

Evidence of what district canvassers have reported as the result of their canvass, not strictly admissible. Canvassers themselves should be called. (1) 3.

Mr. John Goddard Wigg was asked by Mr. *Digby* for the Petitioners,

Q. "Did you conduct the canvass on behalf of Sir Fowell Buxton, the unsuccessful candidate ?"

A. "I kept the canvass as reported to me by the regular canvassers."

Q. "Did you keep a book embodying the result of those reports ?"

A. "Yes."

Q. "Will you say generally what result your books showed the night before the election?"

Mr. *Giffard*, for the Respondent, objected to the question. He requested that this should be proved by calling the canvassers themselves.

Mr. Baron MARTIN:—"What persons reported to the witness is not admissible as evidence, but in every case yet that I have tried it has been given without objection; but as it is now objected to, let the canvassers first show their returns, then it will be competent for this witness to state the result in the same way as an accountant."

No evidence whatever of treating admissible, unless name of person treated down in particulars. (1) 177.

Upon a witness, John Hall, whose name was not in the particulars, being called to prove general treating at a certain public-house,

Mr. *Giffard*, for the Respondent, objected.

Mr. Serjeant *Parry* submitted that he might give evidence of general treating without the name either of the person who had been treated, or of the public-house where the treating took place being in the particulars.

Mr. Baron MARTIN, although he did not think it was necessary to give the name of the public-house, objected to receive any evidence whatever as to treating from a person who had been treated, if his name was not down in the particulars furnished.

Statement by agent, when evidence. (1) 82.

A witness, Page, called for the Petitioners, stated that he was a supporter of the unsuccessful candidate; that on one occasion previous to the election he went into a public-house and found there a number of men being served with drink gratis. Seeing there one Medlock, an active supporter of the Respondent's party, he asked him whether the persons who were drinking there gratis were voters or not, and he answered that they all were.

Mr. *Giffard*, for the Respondent, objected that this was not evidence against the Respondent. Assuming that Medlock was subsequently proved to be an agent, it did not necessarily follow that everything he said would bind the Respondent, though what he did might affect the Respondent.

Mr. Baron MARTIN:—"The act of an agent is evidence against

a Respondent, but, speaking generally, it is confined to that, though it is possible that he may be such an agent as to make his statements evidence also. But clearly you cannot make use of a statement made by an agent upon a matter with which the agency is not connected, which is really nothing more than hearsay."

Statements by a voter evidence to invalidate his vote upon a scrutiny, but not to affect Respondent's seat. (1) 39.

A witness, Charles Smith, was called for the Petitioners, for the purpose of proving that he had been bribed to vote for the Respondent, and was asked,—

Q. "Did you receive anything for voting for the Respondent?"

A. "No."

Q. "Did you ever say to Mr. Battenham that you had been well paid for your day's work?"

A. "No."

Mr. *Digby*, for the Petitioners, then asked leave to call Mr. Battenham to contradict the witness Smith, and to prove that at the time he gave his vote he admitted he had been bribed, and that an objection was then taken.

Mr. Baron MARTIN:—"If you do, that will not be evidence against the Respondent. It would affect this man's vote upon a scrutiny, but to affect the Respondent's seat, you must prove by evidence that this man was actually bribed, not merely that the man said he was bribed."

Agency ceases with the election.

It having been proved that one Bagge, after the election was over, sent presents of hares to a number of the persons who voted for the Respondent,

Mr. Baron MARTIN, in his judgment, said as to this:—

"Where was the agency of Mr. Bagge with respect to this? What is there to show that there was an agency in him after the election? Assuming him to have been a canvasser for the Respondent, and to have been his agent during the election, his agency ceased when the election was over. I have stated that as my opinion before,* and if it were necessary in this case I would reserve it for the Court of Common Pleas."

Mr. Baron MARTIN, in his judgment, declared the Respondent duly elected.

* Vide ante, page 136—140.

As to the principle upon which the inquiry should be conducted, he spoke to the same effect as in the Wigan case.* Principle on which inquiry should be conducted.

As to costs, he said:—

'It seems to me costs must follow the event. There is a misapprehension with respect to costs. It is supposed that imposing the payment of costs is a sort of punishment. There is no punishment in it, nor is it intended to be so. The law does not mean it as a punishment. A petition has been brought and has failed. The Respondent has been put to expense by reason of it, and it is but reasonable that he should be indemnified against that expense. It is merely an indemnification of the expense that a man has been put to by reason of an unsuccessful suit, and there is nothing in this case to except it from the ordinary rule." Costs.

* Vide ante, page 192.

CASE XXIX.

BOROUGH OF DOVER.

BEFORE MR. BARON MARTIN, MARCH 23, 1869.

Petitioner: Mr. Helliott.

Respondent: Major Dickson.

Counsel for Petitioner: Mr. Serjeant Sargood and Mr. Shaw.

Agent: Mr. A. T. Hewitt.

Counsel for Respondent: Mr. Serjeant Ballantine; Mr. Francis.

Agents: Messrs. Stevens, Wilkinson, and Harris.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

The case was opened as one of bribery and treating, but as the witnesses who were expected to substantiate these charges proved to be quite unworthy of belief, permission was asked to withdraw the whole case.

Mr. Baron MARTIN said that was the best course that could be taken under the circumstances, and therefore declared the Respondent duly elected.

Costs.

Costs followed the event.

In the course of the case,

Directions given by agent to witness is evidence,

A witness was called for the Petitioner to prove that one Churchward, an agent of the Respondent, had been guilty of corrupt treating, and he was asked :—

Q. "Did Mr. Churchward give you any directions at any time?"

but not a mere statement. (1) 165.

The question was objected to on the ground that what Churchward said to the witness was not evidence against the Respondent.

Mr. Baron MARTIN:—"A direction might be evidence; a mere statement of a fact made by Churchward to witness, and coming within the character of hearsay evidence, would not be evidence."

A. "Mr. Churchward told me not to go too fast. I suppose he meant in the way of treating, or something of that sort.

Q. "You were not to be too fast. Did he make any allusion to the previous election?"

This question was objected to on the ground that it did not come within the rule just laid down by the Court, but was allowed to be put.

Q. "Did Churchward say anything about getting the Respondent in?"

Mr. Baron MARTIN:—"That is not evidence. You may get from this witness any direction that Churchward gave him, but conversation with respect to what was the prospect of the election is going beyond that quite."

CASE XXX.

BOROUGH OF BRECON.

BEFORE MR. BARON MARTIN, APRIL 8, 1869.

Petitioners: Mr. Lucas and another.

Respondent: Mr. Howell Gwyn.

Counsel for Petitioners: Mr. Serjeant Ballantine ; Hon. E. Chandos Leigh.

Agents: Messrs. Wyatt and Hoskins.

Counsel for Respondent: Mr. Hardinge Giffard, Q.C. ; Mr. C. S. C. Bowen.

Agent: Mr. H. Roscoe.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It was proved that a voter, New, who had acted as a spy for the Petitioners' party, had, during the course of the election, received a bribe from a person who was admitted to be an agent of the Respondent.

At the commencement of the case,—

Non-delivery of particulars in time not a bar to proceeding with the case. (1) 2.

Mr. *Giffard*, for the Respondent, took the preliminary objection that the service of particulars was not such as was contemplated by the Act, inasmuch as the particulars were not delivered three days before the trial of the petition.

Mr. Baron MARTIN overruled the objection.

Mr. Baron MARTIN, in his judgment, declared the Respondent unseated, on the ground of bribery by agent.

Costs.

Costs followed the event.

CASE XXXI.

COUNTY OF YORK, WEST RIDING

(SOUTHERN DIVISION).

BEFORE MR. BARON MARTIN, APRIL 13, 1869.

CASE I.

Petitioners: Hon. F. D. Stuart Wortley; Mr. G. Wilton Chambers.
Respondents: Lord Milton, Mr. H. F. Beaumont.
Counsel for Petitioners: Mr. Maule, Q.C.; Mr. Shaw; Mr. Jeune.
Agents: Messrs. Baxter, Rose, and Norton; Mr. Freeman.
Counsel for Respondent, Lord Milton: Mr. Serjeant Parry; Mr. Campbell Forster.
Agent: Mr. Gainsford.
Counsel for Respondent, Beaumont: Mr. Serjeant Parry; Hon. E. Chandos Leigh.
Agent: Mr. Mills.

THE petition contained the usual allegations of bribery, &c., and prayed that it might be declared that the Respondents were not duly elected, and that Messrs. Stanhope and Starkey, or one of them, was duly elected.

CASE II.

Petitioner: Mr. W. T. W. Spencer Stanhope.
Respondent: Mr. H. F. Beaumont.
Counsel for Petitioner: Mr. Maule, Q.C.; Mr. Shaw; Mr. Jeune.
Agents: Messrs. Baxter, Rose, and Norton; Mr. Freeman.
Counsel for Respondent: Mr. Serjeant Parry; Hon. E. Chandos Leigh.
Agent: Mr. Mills.

The petition alleged that the Petitioner had a majority of legal votes at the election, and prayed the seat for the Petitioner upon a scrutiny.

At the commencement of the case,

Particulars delivered too late.

Mr. Serjeant *Parry*, for the Respondent Lord Milton, stated that a list containing the names of twenty-two persons alleged to have been bribed, had been delivered to the London agent of the Respondent at 7 P.M. on the previous Saturday (it being then Tuesday) ; the order having been that such list should be delivered three clear days before the day appointed for the trial of the case. He submitted that, under the circumstances, the list was inadmissible.

Mr. Baron MARTIN ruled that the list not having been delivered within the time prescribed by the order was inadmissible.

Mr. *Maule*, for the Petitioners, stated that after his Lordship's decision, he could not proceed with the question of bribery, and that Case I. would be abandoned.

Recriminatory case to be gone into before scrutiny.

Before the commencement of the hearing of Case II.,

Mr. *Maule*, for the Petitioner, suggested that, in order to save the time of the Court, the agents on both sides should meet and set off one vote against the other.

Mr. Serjeant *Parry*, for the Respondent, said that before that course could be adopted, the recriminatory case against the Petitioner must be gone into, for if the Petitioner was disqualified from sitting as a member, it would preclude the necessity of proceeding with the scrutiny. He then opened the recriminatory case.

In the course of the recriminatory case,

Payment of travelling expenses of voters to induce them to poll early. (2) 139.

It was proved that several voters living at Penistone, whose polling-place was Sheffield, had their railway fare paid for them from Penistone to Sheffield by an agent of the candidate Stanhope. Sheffield cattle fair was on the polling-day, and in any event they would have come to Sheffield that day, but the agent paid their fare in order to induce them to come and poll early.

Mr. Baron MARTIN said that, although he was of opinion that this payment of railway fares was contrary to the Corrupt Practices Act, 1854, yet inasmuch as it was a point that had not arisen before, he should not decide upon its legality himself, but should reserve it for the Court of Common Pleas.

At the close of the evidence in support of the recriminatory case, and before any decision was given thereupon,

Mr. *Maule*, for the Petitioners, stated that he had decided, with the consent of the Court, to withdraw the petition.

Leave was then given to withdraw the petition, and

Mr. Baron MARTIN, in his judgment, said, as to the withdrawal of the petition:—

"I have no doubt the course pursued by counsel is the right and proper one. In this case the objection to Lord Milton's election was abandoned, and thereupon it became a question whether the Respondent Beaumont or Mr. Stanhope was legally elected. The direct mode of testing that would have been to have ascertained for which of them the greater number of legal votes was given, or, in other words, to have gone into a scrutiny. This would naturally have been the first question entered upon yesterday morning, when we commenced this inquiry. But that is not the course which the case took. By the 53rd section of the Parliamentary Elections Act, 1868, it is enacted that upon a trial of a petition complaining of undue return and claiming the seat, as the Petitioner did in this case, the Respondent may prove that the election of the Petitioner was undue, in the same manner as if he (the Respondent) had presented a petition against him. By virtue of that section we have been engaged these two days upon, not whether the Respondent or the Petitioner was the legally elected Member, but whether or not something had not been done on the part of the Petitioner which incapacitated him from being elected a Member at all. Supposing that question had been tried out and I had decided it against the Petitioner, the only effect would have been that the Petitioner would in any event have been prevented from sitting for the Southern Division of the West Riding of Yorkshire during the present Parliament. But whatever decision I had come to as to the question, we must then have entered upon the scrutiny before the determination of the case, because the question in the scrutiny would be which of these gentlemen had the majority of legal votes, and, assuming the Petitioner to have been personally incapacitated, that would not have affected the votes of the persons who gave their votes for him, they being ignorant of it. They would have been perfectly

Reason why in this case scrutiny dispensed with and petition allowed to be withdrawn.

good votes, and the persons who were the supporters of the Petitioner would have a right to have it determined whether or not the Respondent was sent to Parliament by a legal majority. I cannot conceive a more unsatisfactory inquiry."

Costs.

As to costs, he said :—

"There is one thing upon which I am to exercise a discretion, that is, as to costs. As to the Respondent Beaumont, assuming the case stood on the scrutiny, I would not have given costs on either side; because I think, in a constituency of 19,000, a gentleman who has been rejected only by a majority of eight may reasonably come forward to ascertain what the true majority was. I do not mean to say that evidence might not have been given to alter my opinion, but, as at present advised, I should not have given costs on either side.

"As to the Respondent Lord Milton, the case was abandoned against him, and *primâ facie* he would be entitled to his costs; but I cannot give them. It is perfectly clear that there has been conduct on both sides, to which both sides had no idea that any objection could be taken; that is, entertainment was given to voters upon the day of polling. Both sides seem to have given it; and I think it was highly honourable that it was not insisted upon against the two successful candidates. It was the course that a gentleman would take; having done it himself, he would not put it forth as illegal on the part of his opponent. Nevertheless, it was an illegal act, and I think a person standing in the position I do ought to say so."

CASE XXXII.

BOROUGH OF HASTINGS.

BEFORE MR. JUSTICE BLACKBURN, APRIL 13, 1869.

Petitioners: Calthorpe and Sutton.

Respondents: Mr. T. Brassey; Mr. F. North.

Counsel for Petitioners, in both cases: Mr. Giffard, Q.C.; Mr. Middleton.

Agents: Messrs. Baxter, Rose, and Norton.

Counsel for Respondent Brassey: Mr. Serjeant Ballantine; Mr. C. S. C. Bowen.

Agents: Messrs. Wyatt and Hoskins.

Counsel for Respondent North: Mr. Powell, Q.C.; Mr. Holland.

Agent: Mr. Durrant Cooper.

THE petitions contained the usual allegations of bribery, &c., but did not pray the seat.

It was proved that there was formed on the Liberal side an association for attending to the registration. This association paid those who lost a day's work by coming up and supporting their votes or claims. But, inasmuch as this payment was made at the time of the registration, and not immediately before the election, and inasmuch as nothing was given which enabled the men who came up to make any gain by so coming, it was held there was no evidence to show that these payments were made corruptly.

It was also proved that refreshments were provided gratis for the persons who attended the registration courts; also that at the

municipal elections refreshments were given to voters, but there was no evidence to show that treating, on either of these occasions, was intended to influence the parliamentary election. Evidence was given to show that the wife of the Respondent Brassey had been guilty of personal bribery, but it completely failed to establish a case.

The other evidence as to bribery also broke down.

In the course of the case,—

Lavish household expenditure for the purpose of influencing election generally not illegal.

It was proved that some time previous to the election a lavish household expenditure had gone on in the establishment of the Respondent Brassey, and this was said to have been done for the purpose of influencing the election generally, but not of influencing any one voter in particular.

Mr. Justice BLACKBURN said as to this, in his judgment:—

"There is no law yet which says that any lavish expenditure in a neighbourhood with a view of gaining influence in the neighbourhood and influencing an election is illegal at all. In order to constitute anything which would be a corrupt practice in respect of expenditure of that sort, it must be made with a view of influencing a particular vote. If such an expenditure is made at a place with a tacit understanding of this kind, 'I will incur bills and spend my money with you, if you will vote for me,' that being not the side on which you intended to vote, if it is intended to produce that effect upon the vote, it amounts to bribery."

Isolated act of bribery must be clearly proved.

It was proved that one Tutt, one of the Respondent's committee, was asked by a voter, whom he was bringing to the poll, for allowances for drink. That Tutt had said, "I could not do that, as it would be bribery;" but had added, "you may drink, and afterwards, when it is all over, you shall be paid."

Mr. Justice BLACKBURN said as to this, in his judgment:—

"It is established by parliamentary law that a Member is responsible for his agents in these cases, and it is important to consider, and one must see what an agent is. I have frequently had it in my mind that there is a great difficulty, in strict logic, in making the agency of a person dependent upon the extent of

the corrupt practices committed by him. It does seem that, in strict logic, if a man would be an agent if he was shown to have corrupted 100 people by paying them £5 apiece, then if he corrupts only a single man by giving him a glass of beer, he ought to be regarded as an agent equally. There is no doubt that, in strict logical language, you will find a difficulty in making the distinction; yet I cannot but feel in administering justice, and in administering the law in such a way that it would be tolerable, one must make some distinction of that sort. There is the same thing that constitutes the man an agent in the one case present also in the other case; but I cannot but feel, where the case is a small isolated solitary case, it requires much more evidence to satisfy one of the agency than would otherwise be necessary. If a small thing is done by a person who is the head agent; for instance, in this case, if a very trifling thing had been done by Mr. Poole, who is the agent for the election expenses, I think that would have upset the election; and if small things were done to a great extent by a subordinate person, comparatively slight evidence of agency would probably have induced one to find that he was an agent. But when you come to a single case of one man telling another, whom he was inducing to go to the poll, that he would be paid afterwards for what he might spend in drink,—to make that single case upset the election would require considerable evidence of agency."

Mr. Justice BLACKBURN, in his judgment, declared the Respondents duly elected.

As to paying the expenses of persons who attended the registration courts and supported their votes, he said:—

Not illegal to assist a person with money to be put on the register, unless his vote is influenced thereby.

"The law has never yet said that to pay a person any money or to assist him in any way in being put on the register should be an offence at all. To give any money or any valuable consideration for the purpose of inducing a person to vote is a corrupt practice, and is made an offence; consequently, wherever it appears that under colour of paying people to get put upon the register, or assisting them to get put upon the register, a payment is made which is really intended to influence the vote at the ensuing election, that would be a corrupt practice, and the question in

each case for those who have to determine the question must be whether or not those payments were made with the intention to influence the vote at the election or not, because if they were they were bribes. It is clear that as the law is framed, and as the statute is worded, to pay a person for coming to vote, giving him his day's wages or making up to him his loss of time, for the purpose of voting at the time of the election, would be a bribe. The words of the Act are clear beyond all question upon that point. But no enactment says that paying a man for coming to the registration for the purpose of supporting his claim to vote is to be in itself considered as a bribe. Consequently, one must see whether it is in effect a payment for the sake of the vote. That must be always more or less a question of evidence, upon which the person who has to decide it must draw his own inference."

As to whether giving refreshments to persons who attend the registration courts is treating, he said:—

Supplying refreshments to persons attending registration courts not necessarily corrupt treating.

"The question comes to be, was that meat and drink given with the intention to influence the election. There again in considering the question whether there was the intention which makes treating corrupt treating, which makes the giving of meat, drink, and refreshments gratis corrupt, if it be done with that intent which would make it a corrupt practice, it always comes to be a matter of very great importance, though not conclusive, to see the time when it was done, the extent to which it was done, and the manner in which it was done. I think, as far as the evidence goes here, the giving of those refreshments which were shown to have been paid for by the registration committee is distinguished from any other case, as far as I can perceive, in that it was confined to the time when the Revising Barrister was actually sitting. Taking that view of the matter, although I think it was a very foolish and unwise thing to do, it seems to me to come nearly in the same category as the payment of the men for coming to support their claims. If there was any reason to believe that it was done not merely for that purpose, but to procure popularity or to influence a vote at the election, it would be treating. But if it was merely meant and intended to be part of their coming to support their claims, and not at all to influence the election itself, it would not be corrupt treating. I think, being of no very great

extent, for extent and quantity are very material elements in the consideration, and being confined, as far as I can perceive in the evidence, to the time of the registration, I should draw the inference that it was not intended to influence the votes."

Costs followed the event. Costs.

CASE XXXIII.

BOROUGH OF SOUTHAMPTON.

BEFORE MR. JUSTICE WILLES, APRIL 20, 1869.

Petitioner: Mr. Pegler.

Respondents: Rt. Hon. Russell Gurney, Q.C. ; Mr. P. Hoare.

Counsel for Petitioner: Mr. Serjeant Ballantine ; Mr. Nasmyth.

Agents: Messrs. Willoughby and Cox.

Counsel for Respondent, Gurney: Mr. Giffard, Q.C. ; Mr. Ledgard.

Agents: Messrs. Wilson, Bristowes, and Carpmael.

Counsel for Respondent, Hoare: Mr. Hawkins, Q.C. ; Mr. Griffits ; Mr. Jelf ; Mr. Lamb.

Agents: Messrs. Hayes, Twisden, Parker, and Kelly.

THE petition contained the usual allegations of bribery, &c., and prayed the seat of the Respondent Hoare, upon a scrutiny, for Mr. Moffat.

Evidence was given as to bribery and corrupt employment of voters, but there was not in any case proof of agency sufficient to invalidate the election.

The scrutiny and recriminatory charge against Mr. Moffat, one of the unsuccessful candidates, for whom the seat was prayed, was abandoned.

In the course of the case,

Corrupt act done after election, is

A witness Blaker was examined for the Petitioner, with a view to showing that after the election was over he had been discharged

from work by his employer because he voted contrary to his employer's wish; he was asked,

only material as throwing light on what took place before the election. (2) 88.

Q. When you went back to your work after the election did you see your employer's foreman?

A. Yes.

Q. What did he say to you?

Mr. *Giffard*, for the Respondent, objected to the question.

Mr. Justice WILLES said:—"My impression is that what is done after the election can only be material as throwing light upon some transaction before the election, and so leading to the supposition that there was before the election some breach of section 5 of the Corrupt Practices Act of 1854. I do not think the question has ever been positively decided by any of the Parliamentary Committees."

Mr. *Giffard*: "Mr. Baron Martin in the Salford case* refused to receive evidence of what was done after an election unless some foundation was previously laid by showing that it was connected with something done before the election."

Mr. Justice WILLES: "I have had an opportunity of speaking with him on that subject, and we quite agree upon it. I think this evidence is clearly admissible, because it may throw light upon some transaction, the precise character of which is not at this moment before me. There is a very curious provision in the Parliamentary Elections Act, 1868, s. 6 (2), as to presenting petitions after the twenty-one days have gone by. It is to be in case not of any corrupt practices coming to the knowledge of the Petitioner as having taken place after the election, but in respect of bribery only. Whether that is to be read in the Corrupt Practices Act, 1854, or not, does not clearly appear. If so it can only be read in to make subsequent bribery defeat an election."

Employment of son of voter if wages paid to father comes within Representation of People Act, 1867, s. 11, but unless colorable, does not avoid election. (2).

It was proved that the sons of several voters were employed upon certain work (such as the work of messengers at the election) which if given *bonâ fide* to their fathers would have incapacitated them from voting under section 11 of the Representation of the People Act, 1867, and if colorable would have avoided the election.

* Vide ante, pp. 136—140.

Mr. Justice WILLES said :—" Upon these facts two questions arose. 1st. Whether the employment of a child forming part of a family, and whose wages would go, as a matter of course, into the father's pocket, is not really the employment of the father within the meaning of section 11. That question would arise upon the scrutiny, and I shall certainly hold with respect to these cases upon the scrutiny that they fall within section 11, and that the father's votes must be struck off. The 2nd question is whether such an employment of voters' sons would avoid the election. As to that I should hold that it would not, unless I came to the conclusion that the employment was colorable."

Either taking or giving a bribe invalidates vote upon a scrutiny.

A witness Harrison, having stated that he had offered his vote to one Pope in consideration that he (Pope) would find employment for Harrison's son, and that Pope had accordingly found him employment,—

Mr. Justice WILLES said, in his judgment, as to this :—

" If a scrutiny had been gone into and no farther evidence had been given in answer, the votes of both Harrison and Pope would have been struck off upon a scrutiny upon the ground that Harrison had offered himself or his vote to Pope for sale, and that Pope did procure employment for his son in order to secure his vote. If the employment were stipulated for as the price of a vote, there would be a bribe, and the persons who entered into such a contract would each of them be guilty of bribery within the statute."

Money paid to a voter to remunerate him for expenses incurred in employing assistants while voter engaged in election matters invalidates vote upon a scrutiny.

It was proved that the sum of £10 had been paid to two voters, Bencroft and Pearce, to remunerate them for the expense incurred in employing assistants to attend to their business while they were away and engaged on electioneering matters.

Mr. Justice WILLES, in his judgment, said as to this :—

" I am clearly of opinion that the payment of this sum of £10 brings these cases within the 11th section of the Representation of the People Act, 1867, and that those votes must have been struck off if the scrutiny had proceeded."

It was proved that a cabman, who was a voter, had his cab

hired for the whole day on the polling day; nothing was said to him about his vote, and he was only paid his legal fare.

Employing a cabman who is a voter in the ordinary way does not come within Representation of the People Act, 1867, s. 11. (2).

Mr. Justice WILLES said, as to this :—

"According to my view of the case, it is not bribery to employ a man's cab and pay him for it. If you promised always to go in a man's cab provided he voted for you, that would be bribery. It has, however, to be considered upon the scrutiny whether this comes under section 11 of the Representation of the People Act, 1867. As at present advised, I think the employment of a cabman in his ordinary capacity does not come within the section. It must be some case in which the payment is substantially wages or salary for personal services. A cabman may be employed as an agent, no doubt; it may be superadded to his capacity as cabman: he could also be employed as a canvasser or a messenger; for instance, to take a letter and deliver it himself: but if you jump into a cab and go yourself, although he gets down from the box and delivers the letter at the door, you could hardly call that employment of a cabman as a messenger. At present I have a strong impression that a cabman employed to carry people about is not properly a carrier and a messenger for hire, and that that is not an employment like an agent, canvasser, clerk, or messenger, in the words of section 11."

At the conclusion of the Petitioner's case,—

If principal case fails, Respondent may be unseated upon a scrutiny, although recriminatory case has succeeded.

(2) 116.

Mr. Serjeant *Ballantine*, for the Petitioners, submitted that the best course would be for the Respondents to meet his case before going into the scrutiny.

Mr. Justice WILLES said that he thought the recriminatory case had better be gone into also before the scrutiny, as was done in the Northallerton case.

Serjeant *Ballantine*:—"I apprehend that if they succeed in the recriminatory case it puts an end to the case altogether, as far as the scrutiny goes."

Mr. Justice WILLES:—"I am not so sure of that, for if you failed upon the principal case and were then defeated upon the recriminatory case, you would, as it appears to me, still have the right to go into the scrutiny for the purpose of unseating the Respondents; because if you succeeded in showing that the

Respondents or either of them had not a majority of legal votes, although, in consequence of the success in the recriminatory case, the defeated candidate would not be seated, still the voters would be entitled to a new election.. My recollection of the cases before committees * is that this course has been taken by at least one committee."

Mr. Justice WILLES, in his judgment, declared the Respondent duly elected.

As to the connection between municipal and parliamentary elections, he said :—

Bearing of proceedings at municipal election on parliamentary election.

"These elections are, *primâ facie*, distinct; there is no necessary connection between them, and it is not enough to show misconduct with reference to the municipal election without connecting that election in some way with the Parliamentary election. There have been cases in which it was clear that the municipal and the Parliamentary election were part of one political contest, and that corrupt action at the municipal election either was expressly intended to operate upon Parliamentary elections, or that the necessary result of what was done at the municipal election was to affect the Parliamentary election; whereupon the principle being applied that persons must contemplate the natural consequences of their acts, an intention to affect the Parliamentary election ought to be attributed both to people who were shown to have misconducted themselves with reference to the municipal election, and to agents of the Members who have been guilty of corrupt practices in the course of the municipal election, but with a view to the effect of such practices upon the Parliamentary election, or, the practices being such as must necessarily have affected the Parliamentary election. In such cases the judges have held that the two elections were, under the circumstances, really parts of one and the same political contest, and that the Members in the Parliamentary contest were bound by the acts of their agents in the course of the municipal contest. One of those cases was that of Beverley. Many remarks have been made upon the course taken by my brother Martin in that case † in dealing

* Vide ante, S.-W. Riding case, p. 215.

† Vide ante, page 150.

with what was done immediately in respect of the municipal election as having an effect upon the Parliamentary election. Whilst I concur in what was done there, I act advisedly in the present case in not taking the same course, because here the evidence fails to connect the two elections. At Blackburn* I followed the same course as was taken at Beverley (a course which I entirely approve), and held the Parliamentary election void in consequence of the intimidation practised upon workmen immediately following the municipal election, which, in my opinion, had a necessary effect upon the voters at the Parliamentary election. I mention these cases for the purpose of saying that the circumstances here are altogether different. No evidence was given in this case to connect the two elections to show that they were part of one political contest."

As to the duties of the judge in conducting these inquiries, he said:—

Duties of the judge not inquisitorial.

"I have been considering what is the duty of the judge sitting here; whether he sits here to judge according to what is alleged and what is proved by the parties who bring the case before him, or whether he sits here as a sort of inquisitor after the case is over, so far as the parties are concerned, to enter into a general inquiry as to the state of the borough, or a special and particular inquiry with respect to individuals. My impression, as I have already stated elsewhere,† is that the case of individuals, except so far as it may be necessary to consider such a case for the purpose of determining whether the election is void or not, stands upon the same footing, so far as the duty of the judge sitting here is concerned, as a general inquiry into the state of the borough, and inasmuch as the latter does not fall within the province of the judge, so neither does the former, except in so far as the question is raised by the proceedings in the cause, or necessary to be decided for the purpose of disposing of the prayer of the petition."

Costs follow the event.

Costs.

* Vide ante, p. 199.

† Ante, p. 6.

CASE XXXIV.

BOROUGH OF STAFFORD.

BEFORE MR. JUSTICE BLACKBURN, MAY 4, 1869.

CASE I.

Petitioner: Mr. Chawner.

Respondent: Colonel Meller.

Counsel for Petitioner: Mr. Fitzjames Stephen, Q.C.; Hon. E. Chandos Leigh.

Agents: Messrs. Chilton, Burton, and Co.

Counsel for Respondent: Mr. Giffard, Q.C.; Mr. Motteram.

Agents: Messrs. Baxter, Rose, and Norton.

THE petition contained the usual allegations of bribery, &c., and prayed the seat for the Petitioner.

CASE II.

Petitioners: Messrs. Wild and Smallman.

Respondent: Mr. Pochin.

Counsel for Petitioners: Mr. Giffard, Q.C.; Mr. Motteram.

Agents: Messrs. Baxter, Rose, and Norton.

Counsel for Respondent: Serjeant Ballantine; Mr. Wheeler.

Agents: Messrs. Wyatt and Hoskins.

THE petition contained the usual allegations of bribery, &c., and prayed that the election of the Respondent might be declared void.

Case II. was taken first.

It was proved that an agent of the Respondent Pochin incited the mob to beat and molest people on the day of the election, so as to terrify a number of voters and prevent them from coming to vote.

In the course of Case II.,

It having been proved that five or six men were actually deterred from voting by reason of the violence they received from a mob,

Effect upon election of general intimidation. How qualified. (2) 193.

Mr. Justice BLACKBURN said that sufficient evidence had been given of intimidation, but that the Petitioner could hardly expect the election to be declared void unless it was proved that the sitting member or some agent of his was responsible for some part of the intimidation.

Mr. *Giffard*, for the Petitioner, submitted that sufficient had been proved to show that the election ought to be declared void at common law, on the ground of general intimidation.

Mr. Justice BLACKBURN:—"I admit that if it is proved that there was so much intimidation that the result of the election may have been affected, it is not necessary to prove that it actually was affected. It is a question of fact whether the intimidation has been so great that you may fairly say it was not a free election, that is, if there had not been so much intimidation, such a number of persons would have voted who did not vote, that the result of the election would have been different."

Mr. Justice BLACKBURN, in his judgment, said further as to this:—"Where intimidation happens to such an extent as not to let the election be free, though not traced to the agent it will make the election void. I assent to the observation made by Mr. Giffard that in considering whether an election was free or not it would be necessary to see what was the positive majority,* and if we had entered into a scrutiny here, and the Petitioner Chawner had succeeded in establishing that he was within one or two votes,

* The numbers polled were—
Pochin, 1189.
Meller, 1124.
Chawner, 1107.

or a very small number of that sort, of Colonel Meller, then no doubt the intimidation which would not have been enough to upset the election of Pochin, who was returned by a majority of eighty, might well have affected the election of Meller; whether it would be enough would be a question to be considered afterwards."

Excessive charities evidence of corrupt intention.

It was proved that a previous member for the borough had authorised his agent to spend habitually 300*l.* at Christmas in charities, and that at the Christmas immediately preceding the last election the sum distributed amounted to 720*l.*

Mr. Justice BLACKBURN said as to this in his judgment :—"I do not for a moment mean to say that there may not be many excellent charities distributed to these amounts and more by many people, but where I find that charities are distributed in a borough by those who are expecting to contest it as candidates, and distributed, without check, by the election agent of the borough, I am not charitable enough to draw any other conclusion than that they do it with the intention of giving the voters money in the hope and expectation that it will influence the future election. And there is the further very great danger attending it, that the knowledge that they have been doing it will cause men at the future elections to give their votes in the expectation and hope that they will hereafter receive payment. When that is brought home to anyone, I think it would undoubtedly mean corruption."

Candidate not responsible for acts of agent who does a corrupt act with a view to betray him.

It appeared that at the Unicorn public-house a committee was formed to promote the election of the Respondent Meller, of which committee one Machin was paid by Meller's agent to act as chairman. It appeared that certain voters had gone there, being really adverse to Meller, with the predetermination to take any bribe that might be offered them by Meller's side, and then to go and tell about it. Evidence was tendered to show that Machin was at the time cognisant of this plot, and was himself planning to betray Meller.

Mr. Justice BLACKBURN, in his judgment, said as to this :—"If it had been proved that this Machin, at the time that he was a

paid agent of Colonel Meller, was planning to betray him, I do not think he could any longer be considered an agent for Meller, so that his acts would vacate the election. I wish to point out the distinction which I make, that according as the law stands at present, if a member employs an agent, and that agent, contrary to his wish and contrary to his direction, commits a corrupt act, the sitting member is responsible for it, but where he employs an agent, and the agent treacherously or traitorously agrees with the other side, then if he does a corrupt act it would not vacate the seat unless it is proved that the corrupt act was at the special request of the member himself or some untainted and authorised agent of the member who directed the act to be done. The distinction is pretty obvious, and I mention it to avoid any difficulty or doubt that there might be hereafter from its being supposed that I have said anything more than I do say. I say that if Machin was a treacherous agent he loses the power of upsetting the seat by reason of his unauthorised acts of corruption; it would require actual proof of authority in order to make it so. It is a very different affair if a man, being an agent, has been tricked by the other party into committing a corrupt act, he himself honestly still intending to act as an agent."

In the course of the Respondent's case,

Solicitor privileged from answering questions relating to previous election. (4) 23.

The agent of the Respondent having been called as a witness, and having stated that at a previous election he had acted as agent for another candidate, Mr. Bass, was asked in cross-examination by Mr. *Giffard*, for the Petitioner,

Q. "What did Mr. Bass spend by your means at the last election?"

A. "I think my position as Mr. Bass's private solicitor does not render it necessary for me to answer that question."

Mr. *Giffard:*—"The 7th section of the 26 Vict. c. 29, gets rid of that objection."

Mr. Justice BLACKBURN:—"That section relates to the present election, but I do not know that it refers back to a previous election. The general scope of the Act is to give the fullest inquiry into the pending election, but I do not know that it was intended to relax professional confidence in bygone matters. I have no

doubt as to matters that affect the present election. Unless there is some special enactment that I am not aware of, professional confidence would entitle him not to answer questions as to matters that are merely collateral. I think this is merely a collateral matter. You may ask him whether he did not pay a certain specific sum, which would show that he was guilty of bribery himself."

At the conclusion of Case II., and before Case I. was gone into,

Mr. Justice BLACKBURN said:—"I treat the evidence upon this case as applicable to both cases, except where you apply to examine or re-examine a witness."

Mr. *Giffard* (who appeared for the Respondent in Case I.):—"Substantially this case will be my recriminatory case in the other petition."

Case I.

Without any judgment being given upon Case II., Case I. was thereupon proceeded with.

In this case it was proved that a paid agent of the Respondent Meller presided at a committee held at the Fountain Inn, and that although he did not actually pay money to voters, he had put down the names of a number of them in a list who had voted for the Respondent, as a kind of voucher that if any money was going after the election they should get part of it.

The recriminatory case against Chawner was established by proving that Chawner and Pochin stood jointly, and therefore Chawner was held disqualified to be declared elected for the same reason that Pochin's election was declared void.*

In the course of Case I.,

Case to be postponed if not mentioned in particulars. (1) 27.

Upon evidence being tendered as to an alleged case of treating at the Fountain Inn,

Mr. *Giffard*, for the Respondent, objected to this case being gone into, because the Fountain Inn was not mentioned in the particulars delivered.

* Vide ante, page 229.

Mr. Justice BLACKBURN said that if the matter of the Fountain Inn was of importance it could come on at a later part of the inquiry, but that it should not be brought forward in the first instance; in the meantime particulars must be furnished to the other side.

Is a candidate responsible for previous corrupt acts of adopted agent? (4) 179.

Evidence having been given which tended to show that Mr. Bass, when standing as a candidate at a former election, had spent money through his agent Mr. Brough, and otherwise for the purpose of securing his return, and that afterwards the Petitioner Chawner adopted Mr. Brough as his agent and came into Mr. Bass's place so as to get part of the benefit of that corrupt expenditure,—

Mr. Justice BLACKBURN said that this evidence caused a question to pass through his mind as to whether this would affect Mr. Chawner's seat, or in a minor degree would apply to Mr. Pochin, who had coalesced with Mr. Chawner; the point, which was a new one, appeared to him to be of some importance.

Mr. Justice BLACKBURN, in his judgment, declared the election of the Respondent Meller void on the ground of bribery by his agent; he declared the election of the Respondent Pochin void on the ground of intimidation by his agent. He declared further that in the recriminatory case against the Petitioner Chawner, it had been established that he was ineligible as a candidate.

As to the value of the evidence of spies and informers, he said:—

Value of evidence of spies and informers.

"There is a peculiar class of evidence occurring upon these election petitions; I mean that of witnesses who in a criminal court one would call self-discrediting witnesses,—spies, informers, and persons guilty of crime according to their own story,—who come to seek the reward that is to be got by telling the truth the other way. In a criminal court a verdict of guilty would never be permitted upon the evidence of such witnesses without confirmation. That has long ago been established. In a civil court, though they are looked upon with distrust, there is no absolute necessity that they should be confirmed. In such inquiries as these we must look upon it with considerable distrust, but still

treat it as information which may be true. It calls upon the other side to give evidence in order to explain how it was. In that way these witnesses are valuable, but as a general rule they should not be made the staple of a case or be too much relied upon."

General corruption avoids an election.

As to the effect upon an election of general corruption, he said:—

"There is a principle which I apprehend, though it has been very little acted upon, still exists in Parliamentary law, and is in itself good sense; that is, that if there has been general corruption, although it does not appear to have been done by any agent, —I mean either general corruption, preventing the election representing what it ought to represent, that is, the feeling of the constituents; or general intimidation, so that you may say it is evident the election is not a free one,—in that case, although it is not brought home to the agent, the election would not be good by the common law of Parliament. It must, however, be very difficult in such a case to prove, and very difficult to be able to say whether or not a case is of sufficient magnitude to amount to that."

Avoiding an election on the ground of rioting.

As to general intimidation by mobs, he said:—

"To riot and beat people, and disturb the peace of the town, is a crime in itself, and is committed for the purpose of producing an undue effect upon the election. It is very likely to happen without the members or their agents being guilty of it, but when it happens to such an extent as not to let the election be a free one, though not traced to the agent, it makes the election void. Whether it has been proved to have happened to such an extent as to make the election not free, is a question requiring great consideration, and upon it the Judge must exercise his common sense."

Costs.

As to costs, he said:—

"It seems to me that in this case, in which each side has been successful and each side has failed, I should not saddle either with the costs of the other. I treat the two petitions as really and substantially the same thing. I do not know whether Colonel Meller is himself substantially the Petitioner against Mr. Pochin, but one of the persons who was put forward as a Petitioner

acknowledged, when called as a witness, that he bore a grudge against Mr. Pochin for some cause or other; and viewing it in that way, if he is an independent Petitioner I cannot think him a very meritorious one. I must say, therefore, that each party must pay his own costs."

CASE XXXV.

COUNTY OF NORTH NORFOLK.

BEFORE MR. JUSTICE BLACKBURN, MAY 17, 1869.

Petitioner: Mr. Colman.

Respondents: Hon. F. Walpole; Sir Edward Lacon.

Counsel for Petitioner: Mr. Serjeant Ballantine; Mr. Littler.

Agents: Messrs. Wyatt and Hoskins; Messrs. O. J. Taylor and Son.

Counsel for Respondent Lacon: Mr. O'Malley, Q.C.; Mr. Blofield.

Agents: Mr. H. E. Brown; Mr. C. Diver.

Counsel for Respondent Walpole; Mr. Rodwell, Q.C.

Agents: Mr. H. E. Brown; Mr. C. Diver.

THE petition contained the usual allegations of bribery, treating, &c., and also a

6th allegation that the Respondents, and each of them, or one of them, personally engaged before, during, or at the election to which this petition relates as canvassers or agents, canvasser or agent, persons or a person, reported guilty of corrupt practices or a corrupt practice, by the report of Commissioners appointed in pursuance of 15 & 16 Vict. c. 57, that is to say, reported so guilty by the report of the Commissioners appointed for the purpose of making inquiry into the existence of corrupt practices in the borough of Great Yarmouth, and which report is mentioned and referred to in the Representation of the People Act, 1867, knowing that the person or persons so engaged had been so reported guilty of corrupt practices within 7 years previous to such engagement, whereby the said election is wholly null and void.

It was proved that the Respondents stood jointly, and were so connected as to make them respectively responsible for the acts and agents of each other.

Evidence was given to show undue influence and intimidation, but the case on this point entirely failed.

Evidence was given to show corrupt treating by a Mr. Scott Chad and other persons interested in the election, and who were alleged to have been agents of the Respondents, but failed.

Evidence was also given to show personal treating by the Respondent Lacon on the day of the election, but failed.

The case, upon the 6th allegation of the petition, failed to show that the alleged employment of a scheduled person was done with the knowledge or consent of the Respondents.

In the course of the case,

Agency of landlord canvassing his own tenants.

It was proved that a Mr. Scott Chad was a considerable landed proprietor in the district, and that when he was asked by the Respondent's agent to be upon the committee and to act for them, he said, "No; I will not have anything to do with it, but I will answer for my own tenants." That he did, in fact, look after his tenants, and canvass them, and report to the agent the result of his canvass, which was that his tenants would all go that side. It appeared, however, that they were all ready and willing to go, and that no undue influence was used.

A question having been raised as to the agency of Mr. Chad,—

Mr. Justice BLACKBURN said, in his judgment, as to this:—

"Mr. Scott Chad must be considered an agent to some extent. When a man, who is asked in that way, says, "I will look after a particular set of voters, my own tenants," and he does, in fact, canvass them and nobody else does, I think he is an agent for the purpose of canvassing his tenants. I can hardly distinguish the case from the Westbury case,* where a manufacturer canvassed his own workmen much as Mr. Chad did here. No doubt there were other circumstances there—that he was put on the committee, and so on—but the real governing point was that he was put forward and consented to be the person upon whom they relied to get those voters. If Mr. Chad had been shown to

* Vide ante, p. 50.

tyrannize over his tenantry, evicting them from their dwellings, or if he had been guilty of any other act of tyranny, that would have been undue influence on his part, and consequently would have avoided the election."

Employment of scheduled persons.
31 & 32 Vict. c. 125, s. 44.

In support of the sixth allegation it was proved that the name of a Mr. Preston was in the schedule of persons guilty of corrupt practices issued by the Commissioners appointed to inquire into the Yarmouth election in 1859, and that the Respondent Lacon was aware of this fact; that Mr. Preston was asked to be chairman at one or two public meetings, and was also asked by the Respondent Lacon to propose him as a candidate, and that he did so; that Mr. Preston attended the meetings of the Respondent's committee at Yarmouth; that he took an active part in its proceedings, and on several occasions acted as its chairman, and that as such he signed handbills and circulars. But it was not proved that there had been any direct personal engagement of Mr. Preston by the Respondent, or in fact that he even knew that he had acted as chairman of his committee. It appeared, however, that his agents knew it; also, that they were aware of the fact that Mr. Preston was in the schedule.

Mr. Justice BLACKBURN, in his judgment, after citing the above-mentioned section, said as to this:—

"It is to be observed, in the first place, that the Legislature have carefully confined the operation of the enactment to the candidate having 'personally engaged' the person; therefore, in order to bring the candidate, who is alleged to have committed the offence, within the enactment, it is necessary that he shall have been personally guilty of such offence. I do not construe personal guilt in the sense of doing it with his own hand in order to bring him within this section. I do not think it is necessary to show that the candidate went and spoke to the scheduled man himself and said, 'Act as my agent;' but I think the statute means that it must be brought home to his personal knowledge. If I send a man out to hire somebody in order to shoot somebody else, I am personally guilty of murder if it is done, though I hire the murderer in a roundabout way, and though I may not know who ultimately did it. I think this section means

that where what is done is done with the candidate's 'knowledge and consent,' which is the phrase used in the section immediately preceding, then it amounts to a personal engagement. I proceed further to consider what the nature of the employment of the scheduled person is to be. It must be 'as a canvasser or agent for the management of the election.' I think the sort of agency pointed at is not by any means confined to a paid agent, but I think he must be an agent for the management of the election. I do not think it is necessary that he should be an agent for the management of the whole election; it is enough if he is agent for part of the election: he must be not simply an agent who might be employed to such an extent as might make the candidate answerable for corrupt practices committed by him, but he must be employed in the way of managing a portion of the election. Supposing, for example, Mr. Scott Chad * had been scheduled, I do not think his agency was of the character pointed out by this section. The agent must be an agent having something to do with the management of the election."

Evidence allowed to contradict a witness upon matters collateral to the issue. (5) 39.

A witness Burton, who had been called for the Petitioner, having been cross-examined as to the reason why he had been dismissed from his employment, with a view to shake his credit, a witness was called by the Respondents to contradict what Burton had said in cross-examination, whereupon,—

Serjeant *Ballantine,* for the Petitioner, objected to this evidence in contradiction of what Burton had said in cross-examination, on the ground that he had been cross-examined about a matter not relating to the issue that was being tried.

Mr. Justice BLACKBURN stated that though at Nisi Prius the rule was established that a collateral issue could not be gone into he did not think that that rule could be adhered to in these election inquiries.

Mr. Justice BLACKBURN, in his judgment, declared the Respondents duly elected.

As to the joint candidature of the Respondents, he said:—

* Vide ante, page 237.

Candidates when liable for the acts of each other and their agents.

"It happens that in this case the Respondents have stood jointly. They have chosen to what, we commonly call, coalesce. They united in a canvass, and, in fact, have made each an agent for the other, and they have chosen to stand or fall together: consequently, if any corrupt act is shown to be done by an agent appointed by one Member, it will affect both. Such are the consequences of a coalition. If, therefore, a corrupt act is brought home to one, both are unable to hold their seats. This, however, does not hold good as to the sixth allegation of the petition, because the Act has pointedly and markedly said that that shall be proved against the member personally. Therefore, upon that head of inquiry, necessarily and essentially the two members stand quite in separate positions, and proof personally against the one does not prove it personally against the other; so that, so far as that is concerned, their cases are separate."

Agency.

Speaking with reference generally to the law of agency in election matters, he quoted with approval the observations of Lord Barcaple * in the Greenock case.

Undue influence.

On the question of undue influence he said, after quoting 17 & 18 Vict. c. 102, s. 5:—

"I feel no doubt that where a person, in order to prevent another from voting or to force him to vote, either beats him or threatens injury to his person, or his house, or the like, that is undue influence; but I do not think it is confined to that. Where such a thing is done and is brought home to the agent, according to my view it avoids the election."

Having stated that in accordance with this principle he had been compelled to unseat Mr. Pochin,† at Stafford, he further said:—

"That was a case where the injury was a wrongful, a violent injury; but I think the section is not at all confined to that. It goes on to say, 'if he shall inflict or threaten to inflict, by himself or by or through any other person, any injury, damage, harm or loss.' In another manner that is intimidation. I think that harm or loss is not confined to these cases; I think it would apply to cases where, though a person has a perfect right to do it if he

* Vide post, p. 251. † Vide ante, p. 233.

does not do it with the motive of affecting the vote, yet the doing of it does inflict harm upon the other side. I take it that where a tenant holds his land from year to year, and the landlord can at any time give six months' notice to quit, the landlord has a perfect right to choose his tenant, and turn him out; but if the landlord threatens to inflict, or does inflict, that turning out of his tenant for his vote, that is inflicting harm or loss within the meaning of the Act, and I think that sort of thing was intended to be struck at by the statute. So, where a person employs a servant, and the servant is continuing in his employment, and would in all probability continue so in the ordinary course of things, the master may dismiss him at pleasure, giving him proper notice, and commits no wrong in doing so; but if he does it on account of the vote and for the purpose of coercing the voter, the statute intends, I think, to make that an infliction of loss which was to be punished.

"In the Westbury* case, where it was proved that a manufacturer had exercised coercion on a large scale in order to force his workpeople to vote, it was held, properly, that it was an infliction of damage or loss which, being proved to be done by an agent, vacated the seat. In the Blackburn† and Oldham‡ cases it was rightly held that though the loss and harm to be done to a man is not an illegal harm—not a matter that would be a crime, like treating a man or destroying his property, yet if it be a loss inflicted for the purpose of affecting the vote, it is brought within the statute.

"Coming now to what may be called precarious loss. Suppose the case of a person who is in the habit, at intervals, of frequenting a shop and giving the tradesman some custom, if he chose no longer to give that custom, but to go elsewhere,—if he chose to threaten to take away that custom, and go elsewhere, is that a loss or not? I think if the loss proposed to be inflicted that way were to such an extent and in such a way as would seriously affect the saleable value of the goodwill of the man's business, it would clearly be a loss. The matter must be weighed as a question of degree. It is not to be forgotten that the section

* Vide ante, p. 50. † Vide ante, p. 204.
‡ Vide ante, p. 161.

enacts that the offence shall be a misdemeanour. It must be remembered, in construing the statute, that it is intended that such an infliction of loss, or such a threatening of infliction of loss, must be so serious that one could direct a jury in a criminal court to find that a person was guilty of misdemeanour."

Threat serious and deliberate, and loss, if suffered, not too remote.

Speaking then of mere threats as distinguished from actual loss, he said :—

"Where an injury has been actually inflicted, the proof is comparatively easy, but where merely a threat has been made, or what is supposed to be a threat, and not acted upon, the point is more difficult to determine. The question would be one of fact. Was this a serious and deliberate threat meant to affect the vote (though perhaps repented of and not afterwards acted upon), or merely angry words not meaning anything? When it comes to be a case of what may be called precarious benefit arising from being a customer or the like, the matter should be made out to such an extent that you might direct a jury upon an indictment to find the prisoner guilty. The maxim *de minimis non curat lex* applies to a considerable extent, and in seeing whether there is undue influence from a threat of some loss, you should see whether the loss is really considerable or not, and that the loss is not what a lawyer would call too remote."

On the question of corrupt treating, he said, after quoting 17 & 18 Vict. c. 102, s. 4 :—

Effect of word 'corruptly' in 17 & 18 Vict. c. 102, s. 4.

"All the judges have considered that the word 'corruptly' governs the whole, and that it means, with the object and intention of doing that thing which the statute intended to forbid. It does not mean corrupt in the sense in which you may look upon a man as being a knave or a villain. It is essential also that the candidate should be mixed up in it; he himself must do the act forbidden; but he need not do it with his own money or by himself personally, if he shall be in any way accessory to the giving or providing. If the agent, for whom he is responsible, does it, that, as far as voiding the election goes, has the same effect as the candidate doing it. Here comes that which governs the whole. Does he do it for the purpose of 'corruptly,' *i.e.*, corruptly according to the intention of the statute, 'influencing such person or any other person to give or refrain from giving his

vote?' That is the key note of the statute. I take it that influencing the voters to give their votes means at the election then pending, and it comes to be a question whether or no that intention is made out as a matter of fact. I think every judge who has dealt with these matters has agreed completely with this."

With reference to treating after the election, he said :—

Treating after election—agent's continuing authority.

"It appears that in a considerable number of cases, after the election was over, in some cases a day or two after, in others two or three weeks, some landed proprietor, or squire, or large farmer, gave a dinner to his tenants and people around him, celebrating the victory their side had obtained. Now, in order to make it treating within 17 & 18 Vict. c. 102, s. 4, it is necessary that it should be done by the candidate, or that the candidate should by his agents be accessory to it; and though the statute in express terms says that if done after the election it shall be just the same as before, yet nevertheless when given after the election it must be given by the candidate, or somebody who still continues to be connected with the candidate. Now, the agency at the election which was solely from the canvassing before the election expires with the election, whether or no a person who had been requested to canvass would be an agent whose misconduct would avoid the election would depend upon the evidence; but unless there is something to show continuing authority, that person could not, if he had given a feast ten days after the election, by that act upset the election."

Treating with a view to future elections.

Having stated, that, no doubt, the real intention with which these dinners were given was to increase the influence of the squire who gave them over his tenants and others who would be voters at any future election, he said :—

"As yet no statute has struck at that. If it is thought that such things ought to be prohibited, the Legislature must say that they intend to prohibit them."

As to the giving of meat and drink by a candidate, he said :—

Candidate giving meat and drink not necessarily corrupt.

"I have found that the notion has prevailed that for a candidate to give anything in the way of meat or drink was fatal to the election. That is a salutary notion, and acts as a protective machinery to the candidate, but I cannot lay down the law

to the full extent that that goes. But I can say that whenever a candidate or agent gives any meat or drink he does what is a foolish and imprudent thing, because it becomes a question what the intention was in doing such a thing, and if the judge who tries the case finds that the intention was to influence and affect voters, it vacates the election."

As to costs, he said :—

Costs.

"That part of the case relating to the employment of a scheduled person was very proper to investigate, and if the petition had been confined to that point alone, and had been against the Respondent Lacon only, I should not have decided that the Petitioner should pay the costs. But the petition has been brought against both members, and large expense has been incurred on matters on which there has been a complete failure of proof; there is therefore no reason to depart from the ordinary rule that costs should follow the event."

CASE XXXVI.

BOROUGH OF NOTTINGHAM.

BEFORE MR. BARON MARTIN, JULY 29, 1869.

Petitioners: Messrs. Toer, Tutin, and Southgate.

Respondent: Mr. Seely.

Counsel for Petitioners: Mr. Serjeant Parry; Mr. Macnamara; Mr. Hannay; Mr. Yeatman.

Agents: Messrs. Cockayne and Talbot.

Counsel for Respondent: Mr. Serjeant Ballantine; Mr. Serjeant Sargood.

Agents: Messrs. Wyatt and Hoskins; Mr. Richards.

THE petition contained the usual allegations of bribery, treating, and undue influence. The 4th allegation was, that there was rioting in the town on the polling-day to such an extent that the persons entitled to vote were prevented from voting, and that thereby it was not a free election; and it prayed the seat for the unsuccessful candidate, Mr. Digby Seymour.

Evidence was given of bribery in two cases, but in neither of them was agency established.

The case as to treating entirely failed.

As to general rioting, it was only proved that one man was prevented by fear from voting.

At the close of the Petitioners' evidence, and after consultation,

It was agreed to abandon the case, on the terms that each party should pay their own costs.

Mr. Baron MARTIN in his judgment, said:—

"This matter could not, I believe, be settled without my consent,

Judge's consent necessary

to withdraw case.

but I am satisfied that the arrangement come to is a reasonable and proper one."

As to intimidation, he said :—

Intimidation under Corrupt Practices Act, 1854, s. 5, must be personal and direct.

"The case, with respect to intimidation, is founded upon the 5th section of the Corrupt Practices Act, 1854. According to the true construction of that section, in my opinion, it means the personal direct intimidation of the voter, and does not at all refer to a general intimidation like that alleged in the 4th averment of the petition."

As to the effect of rioting upon an election, he said :—

Rioting to avoid an election must be such that a man of ordinary nerve would be prevented by it from voting.

"No doubt if rioting takes place to such an extent that ordinary men, having the ordinary nerve and courage of men, are thereby prevented from recording their votes, the election is void by the Common Law, for the Common Law provides that an election should be free in the sense that all persons shall have an opportunity of coming to the poll and voting without fear or molestation. But for the purpose it must be a rioting to an extent certainly to deter a man of ordinary reasonable nerve from going to the poll."

As to the hiring of persons on behalf of the candidates, for the purpose of keeping the peace, and protecting the voters, he said :—

The peace should be kept by the police, not by persons hired for that purpose by the candidate.

"I must protest against the employment of such persons at all. The proper course to pursue is to go to the Mayor and communicate to him that there is a probability of the peace of the town being disturbed, and to tell him that he must perform his duty, and swear in a sufficient number of special constables to preserve the peace."

As to the wearing of favours, he said :—

Illegal to wear favours.

"Some steps ought to be taken to prevent people from wearing favours at all. The law prohibits the wearing of favours in the most direct terms.* It does not put it so as to affect the seat, but it clearly directs that it should not be done."

* Corrupt Practices Act, 1854, s. 7.

CASE XXXVII.

BURGH OF GREENOCK.

BEFORE LORD BARCAPLE, FEBRUARY 9, 1869.

Petitioner: Mr. Christie.

Respondent: Mr. Grieve.

The Petitioner appeared in person.

Agent for Petitioner: Mr. Colin M'Culloch.

Counsel for Respondent: Mr. A. Rutherford Clark; Mr. H. H. Lancaster; Mr. J. Teayner.

Agent: Mr. Thomas King.

THE petition contained the usual allegations of bribery, &c., but did not pray the seat.

It was proved that certain arrangements that had been made by the sheriff as to the polling places were not strictly in accordance with the statutory provisions on the subject; it did not, however, appear that these arrangements were made otherwise than *bonâ fide*, or that they in any degree affected the fairness of the election.

As to corrupt practices, it was proved that the Respondent had at the commencement of his canvass, written a letter which contained the following expression, "If I go in I must do it properly to win, I do not suppose Christie is prepared to bleed freely." It was further proved that for fees to agents alone, exclusive of other expenses, the sum of more than £1700 was paid by the Respondent.

It was not, however, established that either this sum of money, or any other, was spent corruptly.

Some evidence was given of bribery and treating, but no case was established.

Procedure analogous to that in the Justiciary Court. (1) 2.

Before the commencement of the case,

Mr. *Clark* enquired what would be the course of procedure in this case.

Lord BARCAPLE stated that the course pursued would be analogous to that in the Justiciary Court.

In the course of the case,

Evidence of bribery not to be excluded on the ground that briber's name is not in particulars. (1) 207.

Upon evidence being tendered as to a case of bribery,

Mr. *Clark*, for the Respondent, objected that the name of the briber was not down in the list of particulars.

Lord BARCAPLE said that he was not at present prepared to exclude the evidence on that ground.

Evidence of illegality in position of polling booth not admissible without a special allegation of it in the petition. (2) 5.

Evidence having been tendered to show that one of the polling-booths was connected with a public-house,*

Mr. *Clark*, for the Respondent, objected to this matter being gone into, on the ground that there was no special allegation as to this in the petition.

Lord BARCAPLE ruled that there being no such allegation in the petition, it could not be gone into as a separate subject of investigation.

Not illegal for sheriff to take the assistance and advice of the town clerk as to the conduct of the election.

It was proved that the sheriff, in the course of making arrangements for taking the poll, had communicated with, and more or less taken the assistance and advice of, the town clerk.

The Petitioner objected that this was illegal on the part of the sheriff, and more particularly so because one of the candidates was at the time of the election provost of the burgh.

Lord BARCAPLE, in his judgment, said as to this:—

"I cannot conceive that the sheriff did anything that can be looked upon as illegal in communicating with the town clerk, who has express duties to perform as to providing places in which to

* This is prohibited in Scotland by the 16 & 17 Vict. c. 28, s. 4.

poll, and by the Reform Act of last year (31 & 32 Vict. c. 48) new duties are imposed upon him, and new instructions are given to him, which imply that he is still a public officer responsibly charged with some duties in this matter. The sheriff is entitled to have from him all the assistance which he, as clerk of the burgh, could give him in the matter. From the very outset of the present system of election, the town clerk has been a person who was charged with duties in providing polling-places in burghs. By the Reform Act, 1832 (2 & 3 Will. 4, c. 65), s. 27, he was the sole person who had any functions to perform in that respect, and he was to make the division. I do not think that section of the Reform Act, 1832, has been repealed; it has been modified and added to by subsequent Acts, but I think it remains there as the basis of the whole thing, showing that the town clerk is a person who, as he has duties to perform in the matter, might well be consulted and called upon by the sheriff to give advice."

Irregularity in arrangements as to polling places when it invalidates election.

It appeared that by the arrangement made by the sheriff for taking the poll at the election, the burgh had not, in fact, been divided into districts, in pursuance of the provisions of 2 & 3 Will. 4, c. 65, s. 27, which enacts that "the sheriff shall divide the burgh into districts and appoint a convenient polling-place for each district, so that not more than 600 persons shall poll at any election at any such place," but that he availed himself of the division of the burgh into wards, made under s. 6 of 31 & 32 Vict. c. 102, and appointed in each of these wards a certain number of rooms or places for the poll to be taken at. Further, he did not assign the persons being voters living within particular portions of each ward to each new polling-place, but he divided the entire list of voters in the ward by taking them alphabetically and allotting one portion of the alphabet to one polling-place, and another portion to a second polling-place, and so on. There was not, however, any evidence to show that the fairness or the result of the election was at all affected by the arrangements that the sheriff did make.

The Petitioner, upon this, contended that the sheriff had acted contrary to the statutory provisions upon which this matter proceeds, and therefore that the election ought to be declared void.

Lord BARCAPLE, in his judgment, said as to this:—

"I do not think it incumbent upon me to pronounce any judgment upon whether there has been any contravention of those statutory provisions, but I am by no means satisfied that there has been any. The provisions in the above-mentioned statutes are not easily all read together. The truth is, that polling-places with reference to counties is an expression which has always had, and to some extent always must have, a somewhat different meaning from that which it has in burghs. A polling-place in a county is very commonly a town, and within that town, no matter where the polling-booths are situated, it is still at the same polling-place. But then there is nothing of that sort in ordinary burghs, unless you conceive that which has not, I believe, in Scotland been at all common, that you have in one of the central burghs a particular public place, which has by use or by misapprehension of the statute, from 1832 downwards, been always used as the polling-place of that burgh. But the much more ordinary thing, and that which the statutes even in their more recent provisions seem to point to is, that in burghs the place for taking the poll must necessarily be more or less fluctuating, because it is either to be a temporary booth erected where the public authorities may find a convenient space for so doing, which disappears whenever the election is over; or it is to be a room hired for the purpose from any person who has a room convenient to be hired for that purpose at that time; that is to say, it is very generally either a booth upon a piece of ground which may happen to be vacant at the time, or it is a shop, or room, or other building which at the time happens to be untenanted. That implies that necessarily there must be some degree of fluctuation, and therefore I do not know that I can say that I think that there is any very precise rule, which can be adopted by the public officers who have the charge of carrying out those provisions. I rather think that he has a latitude. I have no doubt it has always been acted upon, and I rather think that that latitude is within the statutes themselves."

As to whether, if there had been to any extent a contravention of the statutory provisions, that contravention should invalidate the election, he said:—

"I think that these statutory provisions are of such a kind that

it would require that something much more should be made out than merely that they were transgressed in good faith, and without any serious consequence, to invalidate the election."

Lord BARCAPLE, in his judgment, declared the Respondent duly elected.

As to the principle to be applied in dealing with questions of agency in election inquiries, he said:—

Principle to be applied to questions of agency.

"I think there are three principles applicable to three kinds of matters. There is, first of all, the strictest of all principles, that which is applicable to a criminal charge, and there you are responsible for nothing at all except your own individual guilt. That is a thing consistent with ordinary common sense. There is then the principle that is applicable to actions of a civil kind raised against a party on the ground of a wrong done, and in which it is proved that the wrong was done by the defender's agent; that is to say, a person employed by the defender while he was doing the thing he was employed to do; but there there comes in the principle, that he was employed to do the particular work, and that he was not employed to do the wrong. Then there is the third class of cases with which we are at present engaged, where, in these election petitions, it being proved that a candidate is having his election carried on by a committee or certain canvassers, those canvassers do something which, if the candidate is responsible for it, will invalidate the election. And it is held that he is responsible for it in the sense of making the validity of the election depend upon it. I do not see how these election petitions would be of the least use otherwise, because I suppose that there are very few candidates indeed who undertake the practice of corruption by their own hand. I presume there are equally few candidates, or very nearly so, who ever say to their agents that they are to proceed corruptly in the matter."

Costs followed the event.

Costs.

CASE XXXVIII.

BOROUGH OF DROGHEDA.

BEFORE RT. HON. MR. JUSTICE KEOGH, JANUARY 15, 1869.

Petitioner: Sir Francis Leopold M'Clintock.

Respondent: Mr. Whitworth.

Counsel for Petitioner: Mr. M'Donough, Q.C.; Hon. David Plunket, Q.C.; Mr. Ryland, Q.C.

Agent: Mr. P. J. Mayne.

Counsel for Respondent: Mr. Heron, Q.C.; Mr. Palles, Q.C.; Mr. Hamill.

Agent: Mr. Henry Clinton.

THE petition was as follows:—

1. Your Petitioner was a candidate at the above election.

2. Your Petitioner states that the election was holden on the 21st day of November, in the year of our Lord 1868, when Benjamin Whitworth, Francis Brodigan, and your Petitioner were candidates, and the Returning Officer has returned Benjamin Whitworth as being duly elected.

3. Your Petitioner states that upon several days immediately preceding the election, addresses and speeches of an exciting and inflammatory nature were delivered in the public streets of Drogheda by the said Benjamin Whitworth and several other persons, in his presence, and with his knowledge and consent, for the purpose of urging and inciting a number of persons to use

force in order to intimidate and prevent the electors from voting for your Petitioner or the said Francis Brodigan, and to compel them to vote for the said Benjamin Whitworth.

4. A large number of men and women were hired by the said Benjamin Whitworth, or with his knowledge and consent, for the purpose of intimidating electors in order to induce them to vote for the said Benjamin Whitworth, or to refrain from voting for your Petitioner or the said Francis Brodigan.

5. Several members of the Roman Catholic priesthood improperly exercised their spiritual influence over many of the electors for the purpose of constraining them to vote for the said Benjamin Whitworth, and to prevent them from voting for your Petitioner or the said Francis Brodigan.

6. Upon the 18th day of November, 1868, the day of the nomination of candidates, the Court-house, where the election was to be held, was taken possession of by a riotous mob, consisting of the friends and supporters of the said Benjamin Whitworth, who made an attack upon your Petitioner and his proposer and seconder, and several other of his supporters, and by actual force expelled them from the Court-house, inflicting severe bodily injuries upon them.

7. Upon the 20th day of November, 1868, being the polling-day, several thousand persons, friends and supporters of the said Benjamin Whitworth, armed, some with firearms and others with bludgeons and sticks, attacked voters who wished and had promised to vote for your Petitioner, and inflicted very severe wounds and other bodily injuries upon them, and forcibly prevented many of them from recording their votes, and also attacked a large escort of cavalry, infantry, and police, who were acting as an escort for the protection of voters, and caused such terror and alarm in the minds of the electors, that many who had promised to vote for the said Francis Brodigan, and some who had promised to vote for your Petitioner, were induced, by intimidation, to vote for the said Benjamin Whitworth; and many electors who had promised to vote for your Petitioner, and had come long distances to do so, and were most anxious to do so, if they could without risk of their lives, were deterred from going to the poll and recording their votes.

8. Your Petitioner charges that the offence of undue influence at the said election was committed by the said Benjamin Whitworth and a great number of other persons, with his knowledge and consent; and that an organised system of intimidation and violence was established by the said Benjamin Whitworth and his friends and agents; and that the said Benjamin Whitworth could at any time have restrained the rioters from acts of violence if he had been willing to do so.

9. Your Petitioner alleges that if the electors had been allowed to vote according to their wishes, without any intimidation or coercion, your Petitioner would have been returned at the above election as a burgess to serve in Parliament for the said county of the town of Drogheda.

The allegations in the petition, as to the rioting and general intimidation, having been fully established by the evidence:—

Effect on election of general intimidation, though an actual majority of the constituency polled.

Counsel were heard for the Respondent, and contended, in the first place, that, although, doubtless, individual votes might be struck off, upon a scrutiny, upon the ground of intimidation, and also, doubtless, an election might be set aside if an organised and general system either of bribery, treating or intimidation were proved, still, that before setting it aside on such a ground, it would be necessary to prove besides, that such bribery, treating, or intimidation, however extensive it might have been, had had a substantial influence upon the fate of the election; in other words, provided the Respondent had an actual majority of registered electors, be it ever so small, then no matter what happens outside, no matter how many electors are assaulted or driven from the polling-booth, no matter how many voters are hunted through the fields and obliged to go by devious ways in order to get back to their homes, no matter how much blood is shed, no matter how much spiritual intimidation has been brought to bear upon the electors; still, if the candidate who is returned upon the polling-day can say, "There are 1000 electors in the borough, and I have polled, no matter how, 501 of them," his election cannot be declared void on the ground of general intimidation, although the unsuccessful candidate may, upon a scrutiny, by striking off individual votes on this ground, show that but for the general

intimidation he would have had a majority. In support of this argument the *Roxburgh Case** was cited. In that case the Committee reported "that at the late election for Roxburgh riotous and tumultuous proceedings took place, in consequence of which, proceedings were instituted in the Justiciary Court, and certain of the offenders were convicted. That the Committee are of opinion that the riots were not of such a nature nor of so long a duration as to prevent the votes of the electors being taken at the election."

It was further argued for the Respondent that the onus of proof was upon the Petitioner to show that undue influence was exercised by the Respondent in such a way that he thereby obtained a majority, because (it was said) it was impossible for the Respondent to prove the negation of this; in other words, that the Respondent had a right to say to the Petitioner, "You are in a minority, and you must show that the mind of each voter who made up my majority has been unduly influenced."

Mr. Justice KEOGH said, as to the first part of the argument, in his judgment:—

"I must say at once that the argument put forward by the Respondent is one from which I wholly and entirely dissent. It is subversive, in my mind, of the whole principle of freedom of election. It is said by the counsel for the Respondents, that freedom of election is secured provided the majority are shown to have had the power of recording their votes. I deny that altogether. This was not solely a contest between the Respondent and the Petitioner. There is another and greater interest than belongs to either of them; there is the public interest. The humblest individual in the whole of the constituency has as good a right without fear or intimidation to come into the Court-house upon the day of the election as the richest man upon the register, and as good a right as the great majority of the constituency. Take it that a candidate has by the most legitimate means obtained the votes of nine-tenths of the constituency in his favour, yet it is of vital importance to the public weal that the remaining tenth should be able to record their votes and to express their

* Falconer and Fitzherbert's Election Cases, 367.

opinions. If the majority are not only to send their own representative to Parliament, as of course the majority must do, but if they are to drive by terror and with ignominy and with scorn and with denunciation the minority from the poll, what becomes of freedom to this country? The *Roxburgh Case* (which has been cited for the Respondent) reversed almost all antecedent decisions. Mr. Austin, who argued that case, pointed out to the Committee that among the reported cases of petitions to set aside elections on the ground of riots, there were only two since the year 1624 in which the election was not set aside. It is to be observed, too, that in this case the resolution was not arrived at unanimously, but that three out of nine of the Committee voted "that the election be set aside by reason of the premature close of the poll, whereby the electors were deprived of a portion of the period allowed by law for the exercise of the franchise."

As to the second part of the argument, he said:—

"Even if this argument were applied to the case of bribery, it might be hard, if there was an extensively organised system, to trace it to each individual voter, and in the case of treating detection would be still more difficult. But in both these cases you have something to lay your hands upon; you have money, you have food, you have drink. But when you come to the case of intimidation, who is there would venture to gauge its influence? Who can tell what is its effect upon the human mind? It is true that you may prove that a man has been told, standing outside the Court-house 'If you go in and vote for Sir Leopold M'Clintock, your brains will be dashed out.' That will show that that man has been intimidated, but will any man say that if there were half a dozen voters standing by whilst that same observation is made, the influence of that threat directed specially against him will not operate upon them? How is the limit to be fixed? How is the influence of intimidation to be traced? I will put a case which I am very sorry to say is not an imaginary one. Supposing that a minister of religion were to say to an individual voter, 'If you do not vote in a particular way, and if anything should happen to you between this time and the time at which you should reach your dwelling-house, your immortal soul—your salvation—will be perilled," who is to say what would be the

extent of the influence of that observation proceeding from the mouth of a minister of religion upon the whole of his congregation? It is not possible to give evidence in a court of justice which would carry out the proposition which has been laid down by the counsel for the Respondent here, and if at all it is to be made a matter of evidence, the onus of proof should be thrown upon them to show that when the law has been violated, when gross outrage and intimidation has been organised, that intimidation and that violence have not produced their natural consequences, namely, terrifying the people from the exercise of their legitimate franchise."

Mr. Justice KEOGH, in his judgment, declared the Respondent's election void upon the ground of personal undue influence.

As to freedom of voting, he said:—

Effect of organised system of bribery, treating, or intimidation, not traceable to candidate or his agent.

"One of the best established rules of freedom of election is, that the electors shall come to the poll perfectly free as they are registered, that they shall not themselves accept bribes, that they shall not be treated, that they shall not be coerced, and that they shall not be intimidated; and if, as regards any single vote, it is proved to the satisfaction of the Court that any such voter has been so acted upon, it is the imperative duty of the Court to resolve that that is not a good vote. I am taking it now step by step, first as to the question of avoiding an election. There may be many votes declared to be bad votes, there may be many men bribed or treated or coerced at an election, but it does not necessarily follow that because of those circumstances the election itself is void. But I take it to be well settled law, not only by a chain of decisions of Committees of the House of Commons, but decided also collaterally in cases in which such questions were brought before the superior courts, that an organised system either of bribery or of treating will invalidate an election. Surely it could not be for a moment contended that, supposing in a borough of this description banks were to open their doors, to let it be understood and known that every man who voted in a certain way would receive a sum of money, that large amounts were deposited for that purpose, which you might never be able to trace to the candidate, or to any one of his agents, but yet you

would be able to prove that there was an organised and extensive system of bribery carried on in the borough, an election under such circumstances could be allowed to stand. Take then the case of an organised system of treating. I am speaking now of cases of which nothing could be traced to a candidate or his agent; but supposing at the head of every street food and drink were provided in large quantities, and places for eating and places for drinking opened, as to which it was known that every voter who wished to go thither, and seek for food or for drink would receive it, provided he was a voter upon the side of a particular candidate, and that that was an organised system of debauching the voters of a particular borough, although all the while not traceable to the member or his agents so as to disqualify him at future elections, is it to be supposed for a moment that such an organised system as that would not defeat an election? I take it that it is well settled that it would do so, and that there is no possibility of contesting that proposition.

"But to come to the question of general intimidation. In the *Dungarvan Case** the Chairman of the Committee, Sir Joseph Napier, in delivering judgment, said as follows:—'Two great principles were always sought to be maintained; first, that the election should be free, and second, that the character of the candidate should be pure in regard to the election. It is very material to distinguish between acts by which an election may be avoided and conduct by which the candidate may be disqualified. . . . The avoidance of an election depends upon the effect of all acts done which interfere with the freedom required by law, but the disqualification of a candidate arises from his culpability in what he does to procure his return by undue influence. These matters are in their nature distinct, and ought not to be confounded.'

"Mr. Palles, in his argument for the Respondent, did not contend that the law as to intimidation was otherwise than similar to that as to bribery or treating, but in trying to limit the consequences to particular acts of intimidation he used this remarkable phrase, 'the communism of intimidation.' Now I adopt that expression,

* 2 Power, Rodwell & Dew, 325.

though probably it is not a strictly accurate one, but to my mind it conveys a good deal, and the way in which I accept it is this, that to put general intimidation upon a parallel with general bribery or general treating, it must be shown to spread over such an extent of ground, and to permeate through the community to such an extent that the tribunal considering the case is satisfied, if it be so, that freedom of election has ceased to exist in consequence. If that be the case, I for my part see no distinction between an organised system of bribery, an organised system of treating, and an organised system of intimidation."

"Costs to follow the event." Costs.

CASE XXXIX.

BOROUGH OF LIMERICK.

BEFORE MR. BARON FITZGERALD, JANUARY 19, 1869.

Petitioners: Ryan and others.

Respondents: Major Gavin; Mr. Russell.

Counsel for Petitioners: Mr. Heron, Q.C.; Mr. Murphy, Q.C.; Mr. Johnson.

Agent: Mr. John Elland.

Counsel for Respondent Gavin: Mr. O'Hagan, Q.C.; Mr. Cleary.
Agent: Mr. O'Donnell.

Counsel for Respondent Russell: M'Donough, Q.C.; Mr. Coffey, Q.C.; Mr. O'Shaughnessy.

Agent: Mr. Murphy.

THE petition contained the usual allegations of bribery, &c., and did not pray the seat.

Some evidence was given as to bribery, but no case was established.

As to treating, it was proved that a number of orders for refreshments was given to the partisans of the Respondents; but it was not established, either that these orders were given for the purpose of influencing votes, or that they did in fact influence any votes.

The last class of evidence brought forward was that in support of a charge of mixed bribery and intimidation. It was proved that a sum of between 300*l.* and 400*l.* was expended in two nights just before the election in giving drink to several hundred persons throughout the city for the purpose of securing their services to

repel, if necessary, the force used by the opposite side. It appeared that reasonable ground existed for alarm on the part of the Respondent's canvassers, whereupon a meeting of magistrates and clergy was convened, and it was then determined to call upon the book-keeper of the Respondents to set about providing a mob for the purpose of protecting them and counteracting the mob on the other side. This was accordingly done, but it did not appear that in consequence of it any voters were prevented in any way from voting, or that any injury to life or property resulted from it; consequently it was held not to come within the provisions of the Corrupt Practices Act.

Mr. Baron FITZGERALD, in his judgment, declared the Respondents duly elected.

As to the word "corrupt," he said:—

Why the word "corrupt" has been sometimes put in and sometimes omitted in the Corrupt Practices Act, 1854.

"I am satisfied that where in the former part of the 2nd section of the Corrupt Practices Act reference is made to offers and promises made before the vote is given, the legislature clearly intended the Court to draw a *primâ facie* reasonable inference from the act done as to the purpose for which it was done, leaving to the other side to rebut that inference if they could. Every forbidden act done for the purposes mentioned in this Act is to be regarded as done for a corrupt purpose, and once show that a forbidden act is done for any of the purposes mentioned in the Act it immediately becomes a corrupt act, though it would otherwise have been a purely innocent one; that is to say, in some cases the act itself affords ground for reasonable inference of the intention with which the act is done, and there the legislature has not introduced the word 'corrupt;' and if the act is simply proved to be done, the Court is allowed to draw from it the ordinary reasonable inference *primâ facie* that it was done for a corrupt purpose. But there are other cases in which the legislature, for some reason or other, appears to have thought the inference not so strong, and in these cases it introduces the word 'corruptly' for the purpose of showing that it did not intend the ordinary inference of intention to be relied upon. This can be easily and perfectly illustrated. At law the malicious purpose is what constitutes murder. The moment homicide alone is proved, the jury may infer from the

homicide alone the malicious purpose. But if the legislature had said that there must be express malice to constitute murder, the fact of homicide would be left still as raising the presumption of malice at law, and would therefore be evidence materially bearing upon the question; but unless the facts and circumstances made out something in addition, the crime of murder would not be committed. So here, where the legislature has not introduced the word 'corruptly,' and the natural and reasonable inference from the act is that it was an act done for the purpose contemplated, the legislature has treated it as corrupt, without mentioning anything more about it. But in those cases in which it seems to have been intended that the Court should not infer the purpose simply and solely from the act, it has introduced the word 'corruptly.' The whole proof of corruption, as it appears to me, consists in showing that the forbidden act is done for a purpose not innocent according to the Act of Parliament. The legislature shows there may be the giving of entertainment to voters on account of their voting, and though that be in itself a forbidden act, it is not forbidden by the section as to corrupt practices; therefore I think that in that case they introduced the word 'corruptly' for the purpose of showing that, beyond proving the fact of entertainment being given to the voters, you must also give evidence of the purpose."

On the question of the agency of the priests, he said:—

Agency of Roman Catholic clergy.

"If, as it has been admitted by the Respondents' counsel, this is essentially a Roman Catholic city, and if the influence of the Roman Catholic clergy in it be enormous; if, more than that, from the position of the great majority of the electors of the town they naturally look to these clergymen, as being better educated men than themselves, for the management of their temporal as well as spiritual affairs—if that be so, bearing in mind the organised condition of the Roman Catholic clergy, and the fact that in every parish in the town there are at least two or three clergymen so connected with the poorer classes of voters, a question arises in which, as a body, the clergy are interested. If they make the cause of the candidate their own, and give him the benefit of having what may be equivalent in its effect upon the election to a committee-room conducted by themselves in every parish, they being the canvassers; and if it then turns out at the time of the election that

the candidate represents his cause as identical with that of the clergy, and publicly gives out that the question between him and his adversaries is whether the clergy shall be put down or raised up, and he be accompanied by them through the streets canvassing;—if that be so, though the particular clergyman of the parish be not the party who accompanied the candidate in canvassing, I, for my part, will doubt long before I say that the candidate is not, so far as his seating in parliament is concerned, responsible for the acts of those parties in their several districts and parishes. I can determine nothing, but I say that it is a matter upon which my mind is by no means satisfied; and if I were called upon to decide it now, my impression would be decidedly in favour of the liability of the Respondents."

Upon an application being made by Mr. *Coffey*, for the Respondents, for costs,

Costs.

Mr. Baron FITZGERALD stated that according to parliamentary practice he could not give costs unless he were prepared to pronounce the petition frivolous and vexatious, which he was not prepared to do.

CASE XL.

BOROUGH OF CARRICKFERGUS.

BEFORE MR. JUSTICE O'BRIEN, JAN. 21, 1869.

Petitioner: Mr. Torrens.

Respondent: Mr. Dalway.

Counsel for Petitioner: Mr. Faulkener, Q.C.; Mr. Kisby.

Agents: Messrs. M'Lean and Boyle.

Counsel for Respondent: Mr. Law, Q.C.; Mr. A. M. Porter; Mr. W. D. Andrews.

Agents: Messrs. Andrews and Mac-Laine.

THE petition contained the usual allegations of bribery, &c., and did not pray the seat.

Evidence was given in support of the charges of bribery and treating, but for the reasons given below it was not considered sufficient to establish a case.

Some evidence also was given as to intimidation of voters by the mob, but it was not shown to be of such extent as to affect the freedom of election.

In the course of the case,

Amendment of particulars.

Counsel for the Petitioner applied for leave to amend the particulars, in consequence of facts which had just come to his knowledge.

Mr. Justice O'BRIEN allowed the amendment, and subsequently in his judgment he said as to this:—

"During the progress of this case I have felt myself bound, under the provisions of the Parliamentary Elections Act, 1868, to

give every facility I could to the production of witnesses. In some respects the Petitioner came down here manifestly ignorant of the exact grounds upon which several of the charges of the Petition were founded. I therefore thought it reasonable upon a proper case being made out to allow the Petitioner to amend his bill of particulars by adding such facts as only recently came to his knowledge. I consider that in the trial of these petitions, where the purity of the election is questioned, the most searching inquiry should be instituted, and it is the duty of the Judge to afford every facility in his power to that investigation."

Treating after the election calculated to invite inquiry, and therefore affects question of costs.

It was proved that after the close of the poll, the Respondent, as he was coming away from the borough, was met by a large body of people who had come out to congratulate him. Just before his arrival the Respondent's wife sent down to a public-house and had whiskey brought up and distributed among the people. It appeared that there were two voters among those people, but this was not known at the time the drink was given.

Mr. Justice O'BRIEN said, in his judgment, as to this:—

"It cannot be said upon these facts that this drink was given corruptly within the meaning of the 4th section, though it was an act that should not have been done, and is one of the circumstances in the case which seriously affects the question of costs."*

Mr. Justice O'BRIEN, in his judgment, declared the Respondent duly elected.

Meaning of the word "corruptly." Corrupt Practices Act, 1854, ss. 4, 23.

As to the 4th and 23rd sections of the Corrupt Practices Act, 1854, and the difference between them, he said:—

"According to the obvious and grammatical construction of the 4th section the word 'corruptly' at the beginning of it governs the entire of the section. It is not necessary to rely upon the word 'corruptly' that occurs in the middle of the section before the word 'influencing,' because that refers to only one of the acts mentioned in the section, but the word 'corruptly' at the beginning renders it necessary that every act therein mentioned should be done cor-

* Vide post, p. 268.

ruptly in order to constitute an offence within that section. In the 23rd section the word corruptly is not used, and though the section does not mention the word 'candidate,' it applies as well to acts done by the candidate or his agent as to acts done by any other person. Upon those two sections of that statute what is the reasonable conclusion? That the same act of a candidate which, if it fell within the 4th section (as having been done corruptly) would disqualify him from being elected, would, if it only fell within the 23rd section, render him only liable to a 40s. penalty. There must, therefore, be a difference between the acts of the candidate which were legislated against by those two sections. As it could not be reasonably supposed that the legislature intended to subject the candidate to different penalties by the two sections for the same act, I think the difference is, that to bring the act within the 4th section so as to disqualify the candidate from being elected, the act should be done corruptly."

Referring to the case of *Cooper* v. *Slade*, and stating what the facts there were, he cited from the judgment of the Court of Exchequer Chamber the following portion: *—"The 4th section only prohibits the 'corruptly' giving meat and drink for the purpose of corruptly influencing a voter to give a vote. It does not prohibit the *bonâ fide* giving of such meat, &c., unconditionally, while section 23 absolutely prohibits any giving of refreshment to any voter on the day of nomination or day of polling on account of his having polled or being about to poll, without using any such words as 'in order to induce.'" Again,† "We think the word 'corruptly' has a definite meaning. If, for instance, there had been a previous unlawful promise conditional on the voter voting, or if there had been a previous understanding to that effect, or a corrupt bargain for the future, we think the case would have been within the statute."

He then went on to say as follows:—

"Upon the case of *Cooper* v. *Slade* coming before the House of Lords ‡ the judgment of the Exchequer Chamber was reversed, but (as Mr. Rogers says in his book on Elections) without impugning the law as laid down by the Court. There is no decision of the

* 25 L. J. Q. B. 329. † p. 330. ‡ 6 House of Lords Cases, 746.

House of Lords opposed to the construction I have just cited from the judgment of the Exchequer Chamber. It is true that Lord Cranworth, in his judgment, stated that he could not give to the word 'corruptly' as used in the 2nd section with reference to a payment after voting, any other meaning than a payment in violation of that which the statute was passed to prohibit. But Lord Wensleydale adds, 'I have had great doubt whether I was right in the construction which I put at the trial upon the very obscure terms of this Act, when I held that if a candidate after the election pays a voter money, the moving cause of his so doing being that the voter has given him his vote, the payment is corrupt.'"

As to treating, he said:—

What amounts to corrupt treating.

"With regard to the acts which are held to constitute the offence of treating, two cases have been referred to. In the *Roscommon Case** it appeared that voters had, when they came in from the country the night before the polling day, been kept and accommodated in various refreshment-houses in the district; that was held to amount to treating, and the election was avoided. In the *Peterborough Case*† it appeared that on the morning of the declaration (that is, after the election was over) cards were issued announcing that a public dinner would be given to the successful candidate, and because the successful candidate going to the dinner paid for the wine the election was held void. That case certainly goes very far; but, with every respect for the decisions of Committees of the House of Commons, and admitting that as far as practice goes, and where a case is without precedent, they are decisions to be regarded, it will be seen that those decisions are by no means uniform on the subject of treating. Thus in the *Carlisle Case*‡ it appeared that the sitting Member's agent invited about 20 out-voters to breakfast at his house on the polling day, and that they came in conveyances hired for them on purpose; but it was proved that all the persons so invited had long before promised their votes to the sitting Member, and had been always supporters of his party; it was therefore argued that what was done was done *bonâ fide*, and this view was adopted by the Committee, and the election held good. Again, in the *Falkirk*

* 1 Wolferstan and Bristowe, 107. † 2 Power, Rodwell and Dew, 259.
‡ 1 Wolferstan and Bristowe, 95.

*Case** it appeared that refreshments were supplied without stint or payment at several inns in the town on the polling day, and the election was held void; but in the *Tewkesbury Case*,† although it appeared that refreshments were supplied at the agent's house all day on the polling day, the election was held good; and similarly in the *Aylesbury Case*‡ refreshments were supplied at hotels to various voters, the agent being in and out of these hotels during the whole day, which would imply his sanction of what was done, but treating was held not to have been proved. I refer to these cases to show that the decisions of the Committees cannot be said to be uniform upon this question of treating; they are decisions which it would be difficult to reconcile one with another; and therefore we must consider each case upon the facts proved in evidence. Now, in this present case it appears to me that the result of the evidence is that all the voters who partook of refreshments at the house of the Respondent's agent had come to the poll with the express determination to vote for the Respondent, that the principal part of the drink supplied was not got till the election was virtually decided. It is not shown that previous to that day there had been any promise or announcement that such drink would be supplied, and nothing was said to any of the voters about their votes at the time of their getting the drink. This is not similar to any of the reported cases, in which it appeared that the treating was going on during the canvass, and that the candidates before the elections had solicited the votes of electors at public-houses. I cannot, therefore, come to the conclusion that the drink in this election was given corruptly, or constituted the offence of treating within the 4th section of the Act."

As to costs, after citing the Parliamentary Elections Act, 1868, s. 41, he said:—

Costs.

"As a general rule the object of this Act is to assimilate to a certain extent the practice as to costs with the rule of law that costs should follow the result. But a discretion is left to the Judge, and it is perfectly clear that under the Act such general rule might be displaced by special circumstances. Mr. Law, for

* 1 Wolferstan and Dew, 170. † 1 Wolferstan and Dew, 111.
‡ 1 Wolferstan and Bristowe, 13.

the Respondent, relied very properly on the unfounded allegations of bribery made in the petition; and if it was not for other circumstances in the case, these allegations, unsustained by evidence, and inconsiderately made, would be ground for adhering to such a general rule. In my opinion, however, there are circumstances in this case which exempt it from the operation of that general rule. The giving of the drink on the polling day at the house of Gray, an agent of the Respondent, though it was not done corruptly, and was not a ground under section 4 for avoiding the election, was still a proceeding much to be reprehended, and was clearly illegal under the 23rd section of the Act. This transaction, and some of the others to which I have referred* with respect to drinking, were of a character calculated to excite suspicion of undue practices, and not unreasonably calculated to invite inquiry. It is true that the giving of drink in the Committee Room was the act of the agent, and not of the Respondent. But it must be recollected that under the election law of Parliament a candidate, however morally innocent of any charge, is legally answerable for the practices of his agents; and though the case does not come within the 4th section, yet I cannot but hold, so far as regards the costs of this petition, that the Respondent is responsible for the drink having been given. Upon these grounds I must refuse the Respondent his costs."

* Vide ante, p. 265.

CASE XLI.

CITY OF DUBLIN.

BEFORE RT. HON. MR. JUSTICE KEOGH, JAN. 23, 1869.

Petitioners: Messrs. Woodlock and Foley.

Respondent: Sir Arthur Guinness, Bart.

Counsel for Petitioners: Mr. Heron, Q.C.; Mr. Hemphill, Q.C.; Mr. Palles, Q.C., Mr. O'Shaughnessy.

Agent: Mr. David Fitzgerald.

Counsel for Respondent: Mr. McDonough, Q.C.; Mr. Butt, Q.C.; Mr. Exham, Q.C.; Mr. Purcell, Q.C.; Mr. Atkinson; Mr. O'Byrne.

Agent: Mr. Frederick Sutton.

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v. The petition contained the usual allegations of bribery, &c., and did not pray the seat.

iii. It was proved that eleven freemen (whose names are mentioned in the Judge's report) and from twenty to thirty other freemen (whose names did not transpire) were bribed in money by agents of the Respondent, and that forty-one out-voters were bribed by promises of payment of their travelling expenses.

iv. It was also proved that at least 200 voters were induced by agents of the Respondent to sign agreements pledging themselves to give their services gratuitously to the Respondent at the election, but that these agreements were merely colourable, and entered into to evade the provisions of the statutes as to employment of voters.

It was also proved that the Respondent had not limited his

agents to any particular sum, and that the election, in fact, cost the Respondent more than £15,000, though only 5587 persons voted for him.

At the commencement of the case,—

Telegrams to be produced by telegraph company. 1.

Mr. *Heron*, for the Petitioners, stated that the officers of the Telegraph Company had been subpœnaed to produce certain telegrams, but that those persons did not feel at liberty to produce them without the sanction of the court.

Mr. Justice KEOGH said that he had authority beyond that of an ordinary tribunal. The telegrams must be produced.

Subsequently, Mr. Sanger, the telegraph officer, when called as a witness to produce the telegrams, said:—"My Lord, before I produce these telegrams, I must object to their production. We have always looked upon a telegram as sacred, and we think that this decision of your Lordship will shake the confidence of the public in the telegraph."

Mr. Justice KEOGH said that the opinion of the telegraph company as to this could make no difference.

The telegrams were produced.

Mr. *Mc Donough*, for the Respondent, then objected to these telegrams being read until agency had been established, but the objection was overruled.

Mr. Justice KEOGH, in his judgment, said further as to this:—

"Telegrams are nothing but electric letters, written by the candidates or their agents to electors. If such letters were in the pockets of the electors, or if copies of them were in desks of the candidates, the Petitioners of course would have a right to insist upon their production, and there is no reason why, because they are transmitted along a wire instead of being written on paper with pen and ink, they should have any greater protection."

In the course of the case,—

Mr. Justice KEOGH said, as to the amendment of particulars:—

Amendment of particulars allowed unless information wilfully kept back. 2.

"It is right that, following the principles of the House of Commons, lists of particulars should be given, but I will not shut out the parties in any fair case from going beyond the list. Besides, while the Legislature tells the Judge he should originate

an inquiry if he see reason so to do, why should I shut out parties who require liberty to amend the lists. I shall allow the utmost latitude to amend, unless it is a case in which I see that the party kept back information at the time the list was furnished."

91. Subsequently, at the commencement of the fourth day of the hearing of the case, an application was made to insert in the particulars the names of two persons.

Mr. Justice KEOGH allowed the particulars to be amended as requested.

Agency of members of committees to whom written instructions had been sent by respondent's agents.
65.

It was proved that in each of the eighteen wards of the city there was a district committee consisting of from eleven to twenty-five members; in one instance there were fifty-five members. To the secretaries of each of these committees "instructions," as they were called, were sent, signed by the conducting agents of the Respondent. These instructions, among other things, enjoined each committee to appoint canvassers, and then went on to say what the duties of those canvassers would be. They also pointed out how voters were to be treated who applied for employment, and what arrangements should be observed as to bringing up voters to vote on the polling-day.

Mr. Justice KEOGH, in his judgment, said, as to these instructions, as follows:—

"These instructions, signed as they are by the Respondent's conducting agents, are a clear, distinct, and manifest adoption of all the members of the ward committees as agents. Here, under the hands of the conducting agents, is a distinct and positive recognition of all the members of the ward committees, and their acts are just as much the acts of the conducting agents as if they had all been separately appointed by those agents,—as if they had gone round to each of those wards and nominated every man of them, beginning at the president, down to the honorary secretary. This certainly comes within the rule laid down by Mr. Justice Willes,* at Windsor; by Baron Martin,† at Norwich; and by Mr. Justice Blackburn,‡ at Bewdley. There is not a shadow of a doubt that a canvasser of this description is to the fullest extent capable, if he

* Vide ante, p. 3. † Vide ante, p. 10.
‡ Vide ante, p. 18.

transgresses the law, of making the candidate liable. I do not say under an indictment nor in an action for the penalties that are imposed under the Act, but for the parliamentary consequences of their acts."

Mr. Justice KEOGH, in his judgment, declared the election void.

As to the effect of general intimidation, he confirmed what he had said before on this subject in the *Drogheda Case.**

As to the payment of travelling expenses, he said :—

Payment of travelling expenses illegal at common law.

"It is clear and settled law, as laid down by the House of Lords in the case of *Cooper* v. *Slade*,† recognised by Mr. Justice Willes‡ to be still law, and not, in my opinion, in any way touched by the provisions in the Corrupt Practices Act, 1854, and re-enacted except as to Galway, Cork, and Limerick, by the Representation of the People (Ireland) Act, 1868, that a promise to pay the travelling expenses of a voter conditionally upon his supporting a particular candidate, was bribery. That is the law as held by the House of Lords, and I am bound by that. But I should have thought that any conditional inducement of any kind, with or without the statute, to induce a voter to vote in a particular way, was from the earliest times clear and unmistakeable bribery.§ I must say that I cannot comprehend how you can offer anything to any man on the condition that he will vote for another, without committing bribery, and I have the greatest authority in the law of England for that proposition, if any authority were required. In the year 1784 the then Lord Stanhope introduced a bill into the House of Lords, providing that the payment of travelling expenses should be subjected to the penalties of bribery. The bill was carried through the House of Commons, and it was brought into the House of Lords by Lord Stanhope, and Lord Mansfield spoke against the bill and defeated it, saying that the paying of travelling expenses was clearly subject to the penalties of bribery, and that no statute was required to make them illegal."

As to costs, he said :—

Costs.

"Costs follow the event."

* Vide ante, p. 257. † 6 House of Lords Cases, 746.

‡ Vide ante, p. 29. § Vide *Simpson* v. *Yeend*, L. R. 4 Q. B. 626.

CASE XLII.

BOROUGH OF LONDONDERRY.

BEFORE MR. JUSTICE O'BRIEN, JAN. 27, 1869.

Petitioners: Messrs. McGowan and Christie.

Respondent: Mr. Dowse, Q.C.

Counsel for Petitioners: Mr. Joy, Q.C.; Mr. Hamilton, Q.C.; Mr. Matthew Smith.

Agent: Mr. James Hayden.

Counsel for Respondent: Mr. Palles, Q.C.; Mr. M'Loughlin.

Agent: Mr. Forest Reid.

THE petition contained the usual allegations of bribery, &c., and did not pray the seat.

It was proved that one Peacock was an agent of the Respondent, and evidence was given in several instances to show that he had been guilty of bribery, but this charge was not in any case made out.

It was proved that one M'Closkey, who was in gaol under a civil bill decree, was paid out by two persons named M'Intyre and Hanna, but it was not made out that they were agents of the Respondent.

Evidence was given of the employment of, and payment of wages to, a number of supporters of the Respondent, but, as they had all long before their employment promised to vote for the Respondent, it was not established that the employment was given to them in order to influence their votes.

In the course of the case,—

A witness, John Devine, having stated that he had gone into the office of Peacock, an agent of the Respondent, just before the election, to ask to be paid for his time for attending the Revising Barrister's Court,— Particulars may be amended during the hearing of the case.

It was objected on the part of the Respondent that Devine's name was not in the list of particulars, and that therefore this matter could not be gone into; but, upon the application of Petitioners' counsel,— (H) 47.

Mr. Justice O'BRIEN consented to the amendment of the particulars in this respect, upon a satisfactory affidavit being made by the Petitioners' agent.

Upon the affidavit being handed in,— (J) 5.

Mr. Justice O'BRIEN inquired whether Mr. Palles desired to answer the affidavit.

Mr. *Palles* said that he wished to put some questions to Mr. Hayden upon his affidavit. He then asked him,—

Q. "Was the omission that you seek to supply in respect to Devine's name an error?"

A. "It was a mistake."

Q. "Whose mistake was it?"

A. "It was between counsel and myself: if I had observed at the time that Devine's name was not in the particulars, I should have put it in."

Mr. Justice O'BRIEN ruled that the amendment to the particulars should be received.

In his judgment he said further, as to this:—

"I thought it my duty, under the Parliamentary Elections Act, 1868, to make an order for the amendment of the particulars, in order that, by so doing, I might afford every facility for investigating the validity of the election. With that view I also made orders, when requested to do so by the Petitioners' counsel, to compel the attendance of witnesses and the production of documents."

It was proved that one M'Closkey had been arrested the evening before the polling-day, under a civil bill decree for about £12, at the suit of one Ramsay, a supporter of the unsuccessful candidate. On the afternoon of the polling-day, two persons, To pay debt of a voter in order to release him from the custody of the sheriff and

enable him to vote is bribery.

M'Intyre and Hanna, went to the gaol, and, after some conversation with M'Closkey, paid the amount of the decree, got M'Closkey discharged, and brought him to the Court-house, where he voted for the Respondent.

Mr. Justice O'BRIEN said as to this:—

"I have no doubt, upon this evidence unexplained, this should be deemed an act of bribery on the part of M'Intyre and Hanna. The facts of this case are essentially different from those of the *Ashburton Case*,* which was cited in the argument. And I would not regard that case as establishing the rule that money paid to get a voter out of prison in order to enable him to vote, should not, under the circumstances of this case, be considered as money paid to induce him to vote, and as therefore being an act of bribery. Every case must of course be governed by its own peculiar circumstances; but if any such general principle were laid down, it would go far to afford a cloak for bribery and the means of evading its penalties."

Statement made by a deceased person is not evidence against the respondent. (M) 63.

A witness, Neilson, was called to state the circumstances under which one Peacock, who had since died, left his employment, in order to prove that Peacock was an agent of the Respondent. He was asked by Mr. Joy, for the Petitioner,—

Q. "Did he leave your office in Dublin in order to go to Londonderry?"

A. "Yes."

Q. "Tell us what he stated to you as his reason for going to Derry."

Mr. *Palles* objected to any statement made by Peacock being given as evidence. He submitted that they ought to produce the person who had made the arrangement with Peacock.

* Wolferstan and Bristowe, p. 1. In this case one Tucker had issued a writ of ca. sa. against a voter, Leeman, and directed the sheriff's officer to arrest Leeman before he voted. Upon this an agent of the sitting member paid the money to Tucker, taking Leeman's bond and promissory note for the amount. Leeman then voted for the sitting member. Only a portion of the money had since been repaid by Leeman. But Leeman swore he had always intended to vote for the sitting member if he could get to the poll. The Committee held that this was not an act of bribery.

Mr. Justice O'BRIEN ruled that a statement of this sort, although made by a person now deceased, could not be given as evidence.

He was then asked,—

Q. "When he went away to Derry, was his rent in arrear?"

A. "Yes."

Q. "When he came back did he pay these arrears of rent by lodging to your credit a Bank of Ireland bill?"

A. "Yes."

Q. "How did he tell you he came by this money?"

Mr. *Palles* objected to the question.

Mr. *Joy*, in support of the question, said that the answer, when given, would connect the Respondent with Peacock as his agent.

Mr. Justice O'BRIEN :—"Peacock is dead, and although a statement made by him as to how he came by this money might perhaps be evidence as against Peacock's present representatives, still I am doubtful whether it can be used against the Respondent. I will, however, allow the question to be answered on the understanding that I am not bound to decide the case on anything that afterwards turns out not to be evidence."

Employment of supporters who vote for respondent not *per se* colourable though illegal, and likely to affect question of costs.

It was proved that a number of voters had been employed in various ways in connexion with the election. These voters were all supporters of the Respondent, and had all promised him their votes long before their respective employments. It was contended, however, by the Petitioners, that the payments to these men for their work had been made corruptly, as being only nominally for work, or as exceeding in amount the value of the work.

Mr. Justice O'BRIEN said as to this, in his judgment :—

"I think that the observations made by Baron Martin in the second *Bradford Case** bear upon the case I am now considering. He there said that he did not consider the refreshments which had been given to certain voters were given 'in order to be elected,' because they were given to men as to whom it was known beforehand how they would vote. So in this case, the

* Vide ante, p. 39.

men alleged to have been bribed by the payments made to them for the work they had done, had long previously promised to vote for the Respondent, and I see no reason to doubt that they would have voted for him, whether or not they had been so employed and paid. I cannot, therefore, sitting as a juror, come to the conclusion that any of these payments were made or given for any of the objects or purposes which are prohibited by the second section of the Corrupt Practices Act, 1854. But although this election will not be avoided by the fact that several voters, who were employed for the Respondent's election and paid for such employment, voted for him, still it is clear that their doing so was a violation of the 8th section of the Representation of the People Act (Ireland), 1868. I shall therefore take time to consider how far this illegal act, on the part of the Respondent, ought to affect his right to costs."*

Mr. Justice O'BRIEN, in his judgment, declared the Respondent duly elected.

On the question of agency, he said :—

Liability of candidate for volunteer agent if not authorised.

"It is clear (as held in the *Windsor Case*†) that the employment of a man as messenger is not sufficient to constitute him an agent. Mr. Justice Willes, in that case, in those accurate terms for which he is remarkable, said, 'I have stated that authority to canvass—and I purposely used the word *authority* and not *employment*, because I meant the observation to apply to persons authorised to canvass, whether paid or not for their services—would, in my opinion, constitute an agent.' I cannot concur in the opinion that any supporter of a candidate who chooses to ask others for their votes and to make speeches in his favour, can force himself upon the candidate as an agent, or that a candidate should be held responsible for the acts of one from whom he actually endeavours to dissociate himself."

As to the nature of the evidence necessary to establish a charge of bribery, he said :—

Charge of bribery should be clearly and unequivocally made out.

"The charge of bribery, whether by a candidate or his agent, is one which should be established by clear and satisfactory evidence. The consequences resulting from such a charge being established

* Vide infra, p. 279. † Vide ante, p. 2.

are very serious. In the first place it avoids the election, and in the recent trial of the Warrington election petition, Baron Martin is reported* to have said that he agreed with what had been said by Mr. Justice Willes at Lichfield, that before a judge upset an election, he ought to be satisfied beyond all doubt that the election was altogether void. In the next place, the 43rd and 45th sections of the Parliamentary Elections Act, 1868 impose further and severe penalties for the offence, whether committed by the candidate or by his agent. Mere suspicion, therefore, will not be sufficient to establish a charge of bribery, and a judge, in discharging the duty imposed upon him by the statute, acting in the double capacity of judge and juror, should not hold that charge established upon evidence which, in his opinion, would not be sufficient to warrant a jury in finding the charge proved."

As to costs, he said :—

Costs.

"According to the general rule, the costs of these proceedings should follow the result, but the 41st section of the Parliamentary Elections Act, 1868 shows that under certain circumstances such rule may properly be departed from, and it appeared† to me that the fact of some of the persons who voted for the Respondent having been employed on his behalf in various services for the election, and having been paid for such services, was a circumstance which might be considered as affecting, to some extent, the question of his right to costs. Under the 8th section of the Irish Representation of the People Act, 1868, such persons were not entitled to vote, and were guilty of a misdemeanor for having done so, and it is clear that on a scrutiny their votes would have been struck off. The voting of such persons was clearly an illegal act, which is expressly and for obvious purposes of public policy forbidden by the Legislature. At the trial some time was consumed, and the length of the trial was to some extent protracted, by the evidence given as to the employment and payment of the voters in question, and I think that the Petitioners should not pay to the Respondents the additional costs which were caused by the time necessarily occupied in such evidence, and which would not have been incurred but for the fact of those persons having illegally

* Vide ante, p. 44. † Vide ante, p. 278.

voted. I shall therefore declare that the Respondent is not entitled to the costs of the day for either of the two days of the trial, viz., the fifth and sixth days, on which the principal part of such evidence as to the employment and payment of those voters was given, and I shall declare that with that exception the Petitioner shall pay to the Respondent the costs of the petition, the trial, and the other proceedings therein."

CASE XLIII.

BOROUGH OF BELFAST.

BEFORE MR. BARON FITZGERALD, JAN. 27, 1869.

Petitioners: Messrs. M'Tier and Arundell.

Respondent: Mr. M'Clure.

Counsel for Petitioners: Mr. Faulkener, Q.C.; Mr. Kisbey.

Agent: Mr. Moore.

Counsel for Respondent: Mr. Law, Q.C.; Mr. Porter; Mr. Andrews; Mr. Randall M'Donnell.

Agents: Messrs. Andrews and McLean.

THE petition contained the usual allegations of bribery, &c., and did not pray the seat.

It was proved that the Respondent's party promised to subscribe towards the expenses of Johnston, one of the other candidates, in order to get some of his votes split with the Respondent, and that after so promising, they did in fact pay over to Johnston's supporters the sum of 200*l*. It appeared that some of this money was spent by Johnston's supporters in bribing voters to vote for Johnston; and although, if there had been a petition against Johnston, this might have been sufficient to unseat him, still it was not established that it was a corrupt practice on the part of the Respondent's supporters which might affect the Respondent.

The evidence as to personal bribery was not considered worthy of belief.

In the course of the case,

Subscription to Orange lodge not a corrupt payment.

It was proved that the Respondent gave a subscription towards an Orange lodge, although he was not an Orangeman properly so called, nor were his opinions identical with those of the lodge. It was contended on the part of the Petitioners that this was a corrupt payment within the meaning of the Corrupt Practices Act, 1854.

Baron FITZGERALD, in his judgment, said as to this :—

"The profession by a candidate of holding certain opinions is a legitimate mode of influencing votes, and if the Respondent thought that it would be for his benefit with reference to his election to inform Orangemen and others that he did entertain opinions in favour of institutions of this kind, I can see nothing illegitimate in that. The case appears to me identically the same as if he had written a pamphlet in support of such institutions as Orange halls, and had paid the printer for publishing it."

Payment by agent of one candidate to supporters of another candidate, and partly used by them in bribery.

Effect as to first candidate.

It appeared that at the last election for the borough of Belfast, which returns two members, there were several candidates, of whom the Respondent and Johnston were two. They professed very similar political opinions, but they stood as candidates quite independent of one another. Early in the canvassing for the Respondent, certain of his friends and supporters held out an assurance to the friends of Johnston that a public association, instituted for the purpose of defraying the expenses of Johnston's election, would be subscribed to by them to the amount of at least 300*l.* Just before the election, as the subscription went on very slowly (in fact but little more than 300*l.* had been altogether collected from both parties), Johnston's friends began to complain that the promises of subscriptions made by the Respondent's friends were not being carried out; whereupon the Respondent's friends proposed to give a guarantee for the payment of 500*l.* to Clarke, the treasurer of the association, and three other members of it, who were also members of Johnston's election committee. This arrangement was in the first instance agreed to by Kelly, Johnston's agent, and the guarantee was accordingly sent by Brett, the Respondent's agent, to Kelly. On its arrival, however, Kelly objected to it on the ground that money would be more useful, and sent it back to Brett. At the same time he warned Brett not to pay any money to any one but himself or Clarke, the treasurer (although some other of

Johnston's supporters, over whom Kelly had no control, were anxious to have part of it paid to them), lest, as he suggested, the money should get spent improperly, and his own client Johnston should be compromised. Nevertheless, in the face of this warning, the course ultimately adopted was to pay over 300*l.* to Kelly and Clarke, and the other 200*l.* to the supporters generally of Johnston according to their wish, and some of it was in fact spent in bribing for Johnston.

Upon these facts it was contended by Mr. *Kisbey*, for the Petitioners,

1st. That the payment of this 200*l.* to Johnston's supporters in accordance with their request, but in the face of the warning of Johnston's agent that it probably might be improperly spent, and after proof that it really was so spent, was a corrupt practice within the meaning of the 1st and 5th clauses of the Act of 1854, s. 2, so far as the election of Johnston was concerned.

2nd. Assuming the first proposition to be established, he contended that there was evidence to prove that this money had been paid by the Respondent's supporters with the hope or expectation that the effect produced upon the minds of Johnston's supporters by its payment to them would be that they would do what they could to assist the election of the Respondent, and that this payment must consequently be held to be a corrupt payment on their part for the purpose of procuring the election of the Respondent.

3rd. That even if this payment by the Respondent's agents was not to be considered as coming within the precise category of corrupt practices as defined by the Act of 1854, still that it ought to be treated as such, because the consequences of it were practically the same as those which follow the commission of a corrupt act, and those consequences were what the Act was intended to repress.

Mr. Baron FITZGERALD, in his judgment, said as to the 1st point:—

"I confess the strong inference to my mind would be that, although the real intention of the gentlemen who paid this money was to secure by *bonâ fide* means the return of Mr. Johnston, still there is a strong ground for holding that money so paid as this was, and after such warning especially, would be a corrupt practice so far as the election of Mr. Johnston is concerned. If money paid

to secure the return of a party means anything, it appears to me that money, so paid as this was, with almost the assurance and certainty that it will not be regularly applied, is a corrupt practice, and if it be not a corrupt practice, I find it difficult to say what the 1st and 5th clauses of section 2 mean."

As to the 2nd point, he said:—

"If I were satisfied that, however corrupt the practice was as regards Mr. Johnston's election, the only effect it could produce upon the Respondent's election was an identical one, and that that was the effect contemplated, can I make it a corrupt practice as to the election of the Respondent? It does not appear to me that the Act has said so. The true way to try it is, supposing it was so clearly a corrupt practice to secure Johnston's return that an indictment could be maintained against those parties for corrupt practice in order to procure the return of Johnston, and it further appeared that these parties hoped or expected that the effect produced upon the minds of Johnston's supporters would be that they would assist the Respondent, and that they would give their votes just in the same way as they would if the money had been directly so applied—can I say that an indictment could be sustained against them in the alternative in order to procure the election of the Respondent? If I cannot, then I say it comes to this, that it is a case not provided for by the Act."

As to the 3rd point, he said:—

"I quite agree with the Petitioners' counsel that I am to endeavour to construe this Act of 1854 so as to repress the mischief which the Act was intended to guard against. I agree, too, that for that purpose I am, so far as I can, to strip of every colour, of every dress, and of every shape, any proceeding that is proved before me in order to discover the true and real nature of that proceeding, and if, having done so, I find that that proceeding comes within the statutory definition of corrupt practices, I am bound to give effect to the Act of Parliament. But I have no power under the Act to change the nature of the proceedings as proved before me, and to repress them because those proceedings may be shown to be attended with all the pernicious consequences which the Act was intended to guard against. It appears to me that it is an application of real subtlety when one endeavours, by reason of the

mischief which follows, to alter the nature of the Act itself for the purpose of repressing the mischief. That is what I cannot do."

Mr. Baron FITZGERALD, in his judgment, declared the Respondent duly elected.

As to subscriptions for defraying the election expenses of a candidate, he said:—

Subscription for defraying expenses of candidate not illegal.

"I have no reason to believe that a subscription instituted for the purpose of paying the expenses of a candidate and relieve him from any expense in the matter, is in any way an illegal or unconstitutional proceeding. It would behove a candidate to look well that the money of which he availed himself of his own knowledge is legitimately applied, because he incurs a responsibility the moment he holds himself out as a person to be elected by those means. But that a public subscription raised for that purpose, and contributed to by his friends and supporters, is itself illegal, I am not aware."

As to costs, he said:—

Costs.

"Costs follow the event."

CASE XLIV.

BOROUGH OF CASHEL.

BEFORE MR. BARON FITZGERALD, FEB. 15, 1869.

Petitioner: Mr. Henry Munster.

Respondent: Mr. James Lyster O'Beirne.

Counsel for Petitioner: Mr. Butt, Q.C.; Mr. Heron, Q.C.; Mr. Carton.

Agents: Mr. Laffan; Mr. Scallan.

Counsel for Respondent: Mr. Hemphill, Q.C.; Mr. Curtis.

Agent: Mr. Peirce Grace.

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v. THE 1st petition contained the usual allegations of bribery, &c.; it also stated that the majority of votes for the Respondent was only a colourable majority, and prayed the seat for the Petitioner.

vi. A 2nd petition contained the same allegations of bribery, &c., and prayed that the election might be declared void.

iii. It was proved that bribery was committed with the knowledge and consent of the Respondent, such bribery consisting of the payment to voters of alleged claims arising out of a previous election, and also of colourably paying large sums of money for the hire of rooms belonging to voters. In the recriminatory case it was proved that the Petitioner was guilty of bribery by his agents, and was therefore incapable of being elected.

Before the commencement of the proceedings,

Procedure when two petitions. 1. Mr. *Hemphill*, for the Respondent, applied that the two petitions might be tried together.

Mr. *Heron*, for the Petitioner, opposed the application.

Mr. Baron FITZGERALD decided that the two petitions should be opened together, but that he would reserve his decision as to future course of proceeding.

Procedure as to scrutiny. 75.

At the end of that part of the Petitioner's case which related to avoiding the Respondent's election,

Mr. *Butt*, for the Petitioner, proposed to proceed with the scrutiny, and to take each vote separately, according to the uniform practice of the House of Commons.

This was allowed, but the decisions upon the votes questioned were reserved until after the hearing of the recriminatory case.

The recriminatory case succeeded, and the scrutiny thus fell through.

In the course of the case,

Order made for attendance of witnesses out of the jurisdiction. 19.

Mr. *Hemphill*, for the Respondent, upon an affidavit made by the Respondent's agent, asked the Court to order a writ of subpœna ad testificandum to be issued to certain witnesses who were out of the jurisdiction.*

Mr. Baron FITZGERALD granted the application.

A witness was asked,

Certificate of indemnity does not apply to previous election. 107.

Q. "Did you at the previous election, that in 1865, get any money from any one?"

Mr. Baron FITZGERALD (interposing):—"I am not sure that my certificate of indemnity will relieve him from any responsibility connected with the election of 1865."

The question was not pressed.

Illegal questions not to be asked for the purpose of testing credit of witness. 129.

The Respondent, when called as a witness, was asked in cross-examination,

Q. "What did the election of 1865 cost you?"

Mr. *Hemphill*, for the Respondent, objected to the question.

Mr. Baron FITZGERALD did not think the question one that should be allowed.

Mr. *Butt*, for the Petitioner, submitted he had a right to put the question to test the credit of the witness.

* See 17 & 18 Vict. c. 34, s. 1.

Mr. Baron FITZGERALD :—"I will not allow illegal evidence to be given under the notion of credit."

Mr. *Butt* then submitted he had a right to ask him whether he committed bribery at the previous election.

Mr. Baron FITZGERALD :—"I don't think you have."

Payment of election expenses by candidate himself without the intervention of an agent.

Effect on question of personal bribery.

It appeared that, although the Respondent so far complied with the provisions of 26 Vict. c. 29, s. 2, as to declare to the returning officer upon the nomination day the name and address of an agent for election expenses on his behalf, namely, Mr. Patrick Connor, still the appointment was a purely nominal one, for Mr. Connor himself did not know of his appointment until after the election, and in fact performed no duty, and knew nothing of the expenditure by or for the Respondent on account of or in respect of the election. It further appeared that every payment that was made on account of the election was by cheques drawn by the Respondent himself, and these cheques at the trial, although ordered to be produced, were not forthcoming. Under these circumstances, and inasmuch as some of the money so paid by the Respondent was proved to have been corruptly expended,

Mr. Baron FITZGERALD, upon declaring, in his judgment, that the election was void, added as follows :—

"Owing to the unfortunate position in which the Respondent has placed himself, of taking the entire expenditure upon himself, and so leaving himself without the means of proving the nature and extent of that expenditure, I am not relieved from the painful necessity of reporting to the House of Commons that the expenditure for purposes of bribery was with the knowledge and consent of the Respondent."

Liability of Respondent for act of wife of agent.

It was proved that the wife of an agent of the Respondent had bribed a voter.

Mr. Baron FITZGERALD said as to this, in his judgment :—

"I see no way by which the Respondent can escape the consequences of an act of bribery by his agent. It was said by Mr. Hemphill, for the Respondent, that it would make a difference that the wife was the agent of Tracey. I cannot see that. In doing that which is the act of an agent, an agent may use the

instrumentality of another; otherwise there would be no use in establishing any law of evidence on that point at all, for the effect on the principal through the agent would be done away with altogether."

Giving voter a "retainer" to act as agent at an election in order to incapacitate him from voting for either party, not bribery. 96, 100.

It appeared that some time before the election, Laffan, an agent of the Petitioner, sent cheques for five guineas to two of the Respondent's supporters, Wood and Quirk; upon the cheques was written the word "retainer." Both Wood and Quirk, upon finding that if they accepted these retainers they would be incapacitated from voting for the Respondent, sent the cheques back. It was contended for the Respondent in the recriminatory case that this attempt to incapacitate these voters from voting was an act of bribery upon the part of Laffan.

Mr. Baron FITZGERALD, in his judgment, said as to this:—

"My first impression was that it was bribery, but on consideration I am inclined to think that the object before the mind of the party in order to his being bribed must be either the abstaining from voting or the giving of the vote; and though that was the thing in the mind of the person giving these considerations or retainers, that will not make it an inducement to the other party, unless the same thing was before the mind of that party also. I cannot, therefore, say that the giving of these retainers was bribery."

In the course of the scrutiny,

To invalidate vote of an agent it must be proved that he was a paid agent. 76.

Mr. *Butt*, for the Petitioner, proposed to strike off the vote of one Connor, under the Representation of the People (Ireland) Act, 1868, sec. 8.

It appeared that Connor had been nominated before the election by the Respondent and his agent, Mr. Grace, to act as expense agent for the Respondent. Mr. Connor himself stated that he was not informed of this nomination till after the election, but Mr. Grace said that he had informed him of it, and that then Connor had replied that by so appointing him he had disqualified him from voting. However this might be, it was clear that Connor received no pay for acting as agent, and did not in fact perform any duty as such. But Mr. Butt submitted that the

appointment of a person as agent without an express condition that he will act for nothing is an appointment for hire.

Mr. Baron FITZGERALD, however, ruled that the vote was good.

Mr. Baron FITZGERALD, in his judgment, declared the election of the Respondent void on the ground of personal bribery, and he further declared that in the recriminatory case it had been established that the Petitioner was ineligible to be elected on the ground of bribery by agent.

As to costs, he said :—

Costs. "The costs will follow the event with respect to each of these petitions. That is, in the case in which the Petitioner succeeds, the Petitioner is to get the costs; where the petition fails, the opposite party gets the costs."

CASE XLV.

BOROUGH OF YOUGHAL.

BEFORE MR. JUSTICE O'BRIEN, FEB. 19, 1869.

Petitioner: Mr. Brasier.

Respondent: Mr. C. Weguelin.

Counsel for Petitioner: Mr. Heron, Q.C.; Mr. Exham, Q.C.; Mr. Greene.

Agent: Mr. Edward Greene Folby.

Counsel for Respondent: Mr. Butt, Q.C.; Mr. O'Hagan, Q.C.; Mr. Cleary.

Agent: Mr. Lawrence Mooney.

THE petition contained the usual allegations of bribery, treating, &c., and did not pray the seat.

It appeared that the Respondent announced himself as a candidate on July 29, and that almost immediately afterwards a considerable amount of treating took place, for which he was proved to be responsible through his agents. The dissolution of Parliament, in consequence of which the election was held, did not take place till August, and on it being reserved for the Court of Common Pleas to say whether the Respondent ought to be considered to have been a candidate at the time the treating took place, the Court decided that he ought, and the election was consequently held void.

Evidence admitted to show that the Petitioner, who was a voter, had himself

Before the commencement of the case, Mr. *O'Hagan*, for the Respondent, made an objection to the right of the Petitioner to maintain the petition at all. The petition stated that the Petitioner was a voter. He submitted, however, that he was not a

been bribed, and could not therefore maintain petition.
(A) 2.

voter, inasmuch as he was himself a paid agent and had been guilty of bribery and treating at the election, and had also been bribed himself: his vote, therefore, was nullified.

Mr. Justice O'BRIEN said he would consider the matter; in the meantime the case might be proceeded with.

(B) 113.

Afterwards, upon Mr. *Butt*, for the Respondent, renewing his objection to the status of the Petitioner, and stating that he proposed to call evidence in support of his objection,—

Mr. Justice O'BRIEN said that he would reserve to the fullest extent the right of the Respondent's counsel to give evidence in support of his objection.

Upon evidence being brought forward upon the point, they failed to prove that the Petitioner had been guilty of any corrupt practices, whereupon the objection was withdrawn.

Meaning of expression "candidate at election."
21 & 22 Vict. c. 87, s. 3.
(B) 24.

In the course of the case,—

Upon a public-house bill being put in by the Petitioner as evidence of treating, which bill contained items incurred before the dissolution of Parliament, Mr. Butt, for the Respondent, objected that it was not evidence as it stood; he submitted that no treating could take place before the dissolution of Parliament.

Mr. Justice O'BRIEN:—"Supposing a claim is incurred before the election, and satisfied after, it is impossible to say it is not evidence; it is another thing as to its weight."

Mr. *Butt*, for the Respondent, pointed out that by the 21 & 22 Vict. c. 87, s. 3, the definition in the Corrupt Practices Act, 1854, of the words "candidate at an election" is repealed, and the following definition substituted, "all persons elected to serve in Parliament at such election, and all persons nominated as candidates at such election, or who shall have declared themselves candidates on or after the day of issuing the writ for such election, or after the dissolution or vacancy, in consequence of which such writ is issued." If, then, the 4th section of the Act of 1854 (which defines treating) be read with the definition given by the 21 & 22 Vict. c. 87, he contended that a person does not become a candidate till after the dissolution, and therefore that the 4th section of the Act of 1854 would not apply to acts done by him or his agents before that time.

Mr. Justice O'BRIEN, in his judgment, said that Mr. Butt should have the credit of having first suggested this point, which was a very ingenious one. He should not pronounce any opinion on it, but reserve it for the Court of Common Pleas. He pointed out, however, that in the *Windsor Case** a transaction which had taken place before the dissolution had been relied upon as an act of treating, and that Mr. Justice Willes had held it not to be an act of treating for a different reason, and had not touched upon this point.

Subsequently when the point came before the Court of Common Pleas,†

The LORD CHIEF JUSTICE said:—"If, to ascertain the true construction of the 4th section of the Corrupt Practices Act, 1854, we substitute for the words 'every candidate at an election' the definition of that expression given by the 21 & 22 Vict. c. 87, s. 3, the section will read thus: 'If any person elected to serve in Parliament at any election, or any person nominated as candidate at any election, or any person who shall have declared himself candidate on or after the day of the issuing of the writ for such election, or after the dissolution or vacancy in consequence of which such writ has been issued, shall corruptly by himself or by any person on his behalf, at any time either before, during or after any election, commit any of the acts mentioned in the section, he shall be guilty of treating.' Reading the 4th section in this way, it will contain an express enactment that every person elected to serve in Parliament, who shall corruptly by himself or any others on his behalf, at any time either before or during or after any election, do the acts mentioned in the section, shall be deemed guilty of the offence of treating. To get rid of this obvious construction of the section, it has been suggested that we should read the section *redendo singula singulis*, and that we should hold that the words 'who shall have declared himself a candidate' are the only words applying to acts done at any time before the election. This we cannot adopt. We are quite satisfied that the rule of construction referred to, *redendo singula singulis*,

* Vide ante, p. 3.

† For a full report of the arguments of counsel, see Irish Common Law Reports, vol. iii., p. 530.

does not apply to a case like the present, and that if any person who shall be elected, or who shall be nominated, or 'who shall have declared himself a candidate,' after the issuing of the writ or dissolution, does the acts mentioned in the section, he is guilty of the offence of treating. If a party does the acts before the dissolution, intending to become a candidate, but does not, in fact, after the dissolution become a candidate and is not elected, he cannot be guilty of the statutable offence of treating. But the Respondent, having been elected, is, in our opinion, guilty of the offence, though committed before the dissolution."

Giving sums of money to poor. 17 & 18 Vict. c. 102, s. 2 (3).

It was proved that on and immediately before the polling-day, large sums of money were distributed, in shillings and half-crowns, to poor people in the streets of the borough. As much as £160 was so given away by one person, £130 by another, and £50 by another: none of this money, however, was given to voters.

Upon these facts, Mr. Exham, for the Petitioner, submitted that this distribution of money was bribery under the Corrupt Practices Act, 1854, s. 2 (3), inasmuch as it was given in contemplation that the people who got it would spend it in drink at the public-houses, and thereby in that indirect manner influence the votes of the publicans.

Mr. Justice O'BRIEN, in his judgment, said as to this:—

"Such a proceeding as this was not contemplated as being within the provisions of the Act."

Not illegal to employ watchers, *bonâ fide*.

It was proved that about 350 persons were employed for the Respondent's party at 3*s*. a day, to act as watchers; that is to say, to protect voters from any violence that might be offered by the opposite party. It appeared that watchers were absolutely necessary for this purpose, and that in consequence of their presence the election went off more quietly than elections usually did.

Mr. Justice O'BRIEN, in his judgment, said as to this:—

"Supposing that this arrangement as to watchers was made *bonâ fide* (as I have no doubt it was), and that it was a reasonable precaution, the only question to be considered is, whether it was in any instance carried out colourably or as a cloak for bribery or undue influence."

Particulars, how they ought to be framed.

It appeared that in the particulars delivered by the Petitioner, seventy-eight cases of bribery were mentioned, but as to only five or six of these was any evidence offered.

Mr. Justice O'BRIEN, in his judgment, said as to this:—

"The object of a bill of particulars is to give to the opposite party reasonable information as to the case which will be made against them; to give him an opportunity of inquiry, and to enable him, if he can, to contradict or explain the facts charged against him: but the system adopted here would defeat that object. The Petitioner might as well have included in the case all the persons who voted for the Respondent, and I cannot avoid saying that, in my opinion, this bill of particulars was either framed as a blind, and for the purpose of baffling inquiry, or that it was framed with a reckless disregard to its accuracy, and without the slightest consideration whether the charges in it were true or not. Besides, the Respondent himself is charged with personal bribery, but when called as a witness by the Petitioner, he is not asked a single question as to this charge. I think some regulations should be made with regard to such bills of particulars, and I have made these observations to express my disapprobation of the practice resorted to on this occasion, and to show that it should be discountenanced in every possible way, and should be regarded as a matter which (whatever the result of the petition may be) should materially affect the question of costs."*

At the close of the Petitioner's case,—

1 & 2 Geo. 4, c. 58, impliedly repealed by subsequent Acts.

Amendment of petition at the hearing. (I) 21.

Mr. *Exham*, for the Petitioner, said that if the Court should hold that under the charges contained in the Petition, as it then stood, the Petitioner was not entitled to rely upon the payments made by the sitting member to his agents of fees beyond those authorised by the 1 & 2 Geo. 4, c. 58, s. 6, which is an Act to regulate expenses of elections in Ireland, the petition should be amended as follows: "That before, during and after the election, the Respondent by himself, or by some person or persons employed by him, directly or indirectly gave money, fees, and retaining fees, to attorneys, agents, inspectors, and clerks, for doing

* Vide post, p. 298.

something relating to the election, over and above the sums set forth to be paid in the schedules to the 1 & 2 Geo. 4, c. 58, and by reason of such giving the Respondent became disqualified as a candidate and the election void."

Mr. *Butt*, for the Respondent, submitted that the Court had no jurisdiction to amend the petition, and that if permitted, the provision of the Parliamentary Elections Act, 1868, s. 6 (2), would be thereby defeated, which required the petition to be filed within 21 days of the return of the writ.

Mr. Justice O'BRIEN doubted whether he had power to permit an amendment, and if he had, he did not think he ought to do so.

Mr. Justice O'BRIEN, in his judgment, said further as to this:—

"If it were necessary to decide the point, I should be inclined to hold that that Act of Geo. 4 had been impliedly repealed. For by various Acts of Parliament passed subsequently to this Act of Geo. 4, the number of polling-days have been reduced to one, and at the same time power has been given to appoint additional polling-places. This alone would necessitate the employment of more than one conducting agent, which is all that is allowed by the Act of Geo. 4. In a county it could not now be contended as reasonable or just that a candidate should be prohibited from having more than one such agent, or that he should be allowed to pay that agent the sum prescribed for one day by the Act of Geo. 4. If he did so, he could not get persons upon whose judgment or intelligence he could rely."

Mr. Justice O'BRIEN, in his judgment, said that the final decision as to the validity of the election would be postponed until the question reserved by him had been decided by the Court of Common Pleas.*

Over-payments to agents not bribery.

As to whether over-payments of agents can be considered as acts of bribery, he said:—

"Considering the very penal consequences attaching to bribery, and that if these over-payments to agents were to be considered as

* The Court decided the election to be void.

acts of bribery they would be acts of personal bribery by the candidate himself who paid those agents, I cannot come to the conclusion that they could be considered as such, or that it was the intention of the Legislature to make them so; such an intention would, I think, have been expressed in clear and unambiguous terms."

As to whether the 35 Geo. 3, c. 29, s. 19, is still in force with regard to boroughs in Ireland, he said :—

35 Geo. 3, c. 29, impliedly repealed by subsequent Acts.

"This Act of Geo. 3, so far as relates to counties, was repealed by 4 Geo. 4, c. 55, but section 79 of this Act of Geo. 4 contained a provision similar to that of section 19 of the Act of Geo. 3, except that it applied only to counties. That 79th section of the Act of Geo. 4 was itself repealed by the Corrupt Practices Act, 1854, which does not repeal or notice the Act of 35 Geo. 3, which was then unrepealed as to boroughs in Ireland, though it does repeal the Act of Will. 3, which contains similar provisions as to English boroughs. It was therefore contended by Mr. Exham, for the Petitioners, that section 19 of 35 Geo. 3 is still in force as to Irish boroughs. It, however, would require some reason to establish that the Legislature intended that a different state of law should exist in Ireland from that which exists in England, and also intended that there should in Ireland be a difference in the law of treating as regards boroughs from that which exists as to counties and counties of towns. Mr. O'Hagan (Respondent's counsel) also relied on the preamble of the Corrupt Practices Act, 1854, as showing the intention of the Legislature to have (as regards corrupt practices) the same law for all elections. That preamble states the insufficiency of the laws then in force for preventing corrupt practices in the election of a member; and that it was expedient to consolidate and amend such laws. Then the 4th section deals with some of the acts which are legislated against by the 19th section of the 35th Geo. 3, and provides that they shall constitute the offence of 'treating' if they are done 'corruptly;' the 23rd section of the Act of 1854 may also be referred to. It is clear, so far as the 19th section of 35 Geo. 3 was to remain in force, there would be no doubt that the giving of meat, food, or drink upon the day of polling would be illegal. But this 23rd section of the Act of 1854 states that doubts have arisen as to

'whether the giving of refreshments to voters on the day of nomination or the day of polling be or be not according to law Probably whoever prepared this Act had not in his contemplation the Act of 35 Geo. 3. But I fully concur in the principle so clearly relied on by Mr. O'Hagan, namely, that an Act of Parliament, though not expressly repealed, is impliedly repealed by a subsequent Act, the provisions of which are inconsistent with the previous Act, and I think, on that ground, I should hold that this 19th section of 35 Geo. 3 is no longer in force even as to boroughs in Ireland."

As to reserving for the Court the question of the existence of a corrupt motive, he said :—

Only questions of law to be reserved for the Court.

"The existence of a corrupt motive in doing any act is an inference to be drawn from the evidence. Under section 12 of the Parliamentary Elections Act, it is only questions of law that can be reserved for the Court, and the judge who tries the case is the only tribunal to decide whether or not the existence of a corrupt motive is to be inferred from the evidence."

As to costs, he said :—

Costs.

"The award of costs is discretionary with the judge. The fact of the defeat of a petition would not necessarily be followed by the Petitioner paying the costs; and on the other hand, I think it does not necessarily follow that a successful Petitioner should get his costs. There have been repeated instances before the Parliamentary Committees where, although the member was unseated, he was not condemned to pay costs. I have already referred to circumstances which I think furnish grounds for the exercise of that discretion,* and for disallowing costs to the Petitioner should he ultimately succeed by the decision of the Court of Common Pleas. And on the other hand, I think that should the Petitioner ultimately fail by the decision of the Court of Common Pleas, there are reasons for disallowing costs to the Respondents. With regard to the grounds for disallowing costs to the Petitioner, it is clear upon the evidence that so far as he himself is concerned, the question of costs is one of perfect indifference to him, because he is indemnified by Sir Joseph M'Kenna; and in point of fact, as

* Vide ante, p. 295.

far as costs are concerned, the question may be considered as if this was the petition of Sir Joseph M'Kenna."

After the decision of the Court of Common Pleas, he further added, as to costs, as follows:—

"One of the reasons, as I said in the course of the case,* why I think the Petitioner is not entitled to costs, is on account of the character of his bill of particulars. Although it contained specific charges of the bribery of 78 electors, no charge was proved, and as to several of them no evidence was offered. It appeared to me that these numerous and unfounded charges were either inserted for the purpose of baffling inquiry by the number of cases about which inquiry was to be made; or were inserted at hazard, without any reasonable grounds, and with a complete indifference as to their being well founded or not. Another reason is, considering the unsuccessful candidate as himself in fact the Petitioner, the conduct pursued previous to the election of those who acted with him may well be relied on as disentitling him to costs. Besides this, there is another thing to be taken into consideration, and that is, that up to the trial of the petition the unsuccessful candidate has failed to send in the detailed statement of election expenses, as he was bound to do under 26 Vict. c. 29, s. 4. For these reasons I shall not order the Respondent to pay the general costs of these proceedings, with the exception of costs of arguing the special case before the Court of Common Pleas. I reserved that question at the instance of the Respondent, and I therefore think it reasonable that he should pay the Petitioners' costs of that argument."

* Vide ante, p. 295.

CASE XLVI.

BOROUGH OF SLIGO.

BEFORE RT. HON. MR. JUSTICE KEOGH, FEB. 19, 1869.

Petitioners: Messrs. Foley and Foley.

Respondent: Major Knox.

Counsel for Petitioners: Mr. Coffey, Q.C.; Mr. Palles, Q.C.; Mr. Waters, Q.C.; Mr. O'Loghlin.

Agent: Mr. Michael Malony.

Counsel for Respondent: Mr. McDonough, Q.C.; Mr. James Robinson, Q.C.; Mr. W. H. Kay, LL.D.; Mr. Hartigan.

Agent: Mr. Lawder.

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v. THE petition contained the usual allegations of bribery, &c., and did not pray the seat.

iii. It was proved that a number of voters were bribed by persons whose agency was clearly established.

iv. It was also proved "that a system of intimidation and violence was organized and carried out for months previous to, and during the election, subversive of freedom of election, and endangering the lives and properties of the electors, that outrages were committed previous to, and during the election, which deterred electors from exercising their franchise at the election, but such intimidation and violence was almost entirely practised by large mobs of persons acting in opposition to the Respondent."

It was further proved that such intimidation was continued in the borough from the time of the election down to and during the trial of the election petition, and the venue was in consequence

changed to Carrick-on-Shannon, under the power given for that purpose by the Parliamentary Elections Act, 1868, s. 11 (11).

In the course of the case,

It having been proved that one Cherry had bribed several persons, upon Cherry being called as a witness by the Respondent to rebut agency,

Witness not bound to criminate himself, but see 26 Vict. c. 29, s. 7. 136.

Mr. Justice KEOGH said :—"I think I ought to tell Mr. Cherry the position he is in. You are now about to be examined, Mr. Cherry, as to transactions which involve a criminal offence : there is strong evidence of your having been engaged in a criminal transaction. You are not, therefore, bound in any way to give evidence which will tend to criminate yourself. At the same time, if you choose to make a full and satisfactory disclosure, not in part but in all things, you are entitled to ask me for a certificate of indemnity."

At the close of the witness's evidence,—

Mr. Justice KEOGH refused to give him a certificate, on the ground that his disclosures had not been either full or trustworthy.

Mr. Justice KEOGH, in his judgment, declared the Respondent unseated, upon the ground of bribery by his agents.

As to the law of agency, he said :—

Liability of candidate for act of agent.

"An observation was made by the counsel for the Respondent that the evidence ought to be strong—very strong, clear, and conclusive of agency before a judge allows himself to attach the penalties of the Corrupt Practices Prevention Act, 1854, to any individual. I agree in that. But it would be altogether a mistake, both in law and fact, to think that you can depute individuals to do certain things, or that they should take upon themselves to do certain things with your sanction, and that you can escape the consequences of their acts by afterwards stating, whether or not upon oath, that you did not contemplate those acts being done when you gave the authority which constitutes agency. Agency is a result of law to be drawn from the facts in the case, and from the acts of individuals, and it is not by what a principal tells me upon the table that he intends to do, that I am to con-

strue the question of agency; but I am to decide that question and the question of intention itself, not from the words of an individual now, but what I conceive to be the natural and necessary consequence of his acts and words at the time he gave any authority. If it were otherwise it would be open to any man, if he was a man of good character and of unquestionable reputation, to tell a particular individual to go forth and be his agent; afterwards to come up upon the table when that agent had transgressed all moral duties and to say, I never intended that he should do anything wrong; all I intended he should do was what was legitimate and lawful. But I lay down this proposition most distinctly, that no sitting member can guard himself against the consequences of the acts of agents, if once they are proved to be agents, by coming before the Court and swearing, even though he may convince the Court he is swearing truly, that he never intended that anything illegal should be done at an election. It is not what he intended, as he explains here, but it is what authority did he give, and did the acts of the person so authorized, legal or illegal, naturally follow the authority which was given? A common and familiar instance occurs to my mind; the wherryman upon the river does not arrive one moment the less certainly at his destination because he happens to be rowing one way and looking another."

As to how long the consequences of an act of bribery endure, he said:—

Consequences of an act of bribery, duration of.

"Any act committed previous to an election with a view to influence a voter at the coming election, whether it is one, two, or three years before, is just as much bribery as if it was committed on the day before the election or the day of the election; nay, more, if any man commits bribery in any constituency in the first week of a Parliament, and if he asks for the suffrages of the constituency in the last week of the seven years of that Parliament, if it lasted so long, that act committed six years before can be given in evidence against him, and his seat would be forfeited."

As to costs, he said:—

Costs.

"The Respondent must pay the costs of the petition."

CASE XLVII.

BOROUGH OF GALWAY.

BEFORE RT. HON. MR. JUSTICE KEOGH, FEB. 25, 1869.

Petitioner: Mr. Thomas McGovern.

Respondents: Lord St. Lawrence; Sir Roland Blennerhasset, Bart.

Counsel for Petitioner: Mr. Heron, Q.C.; Dr. Seeds.

Agent: Mr. McGovern.

Counsel for Respondent, Lord St. Laurence: Mr. M'Donough, Q.C.; Mr. Palles, Q.C.; Mr. O'Brien.

Agent: Mr. Macnamara.

Counsel for Respondent, Blennerhasset: Mr. Waters, Q.C.; Mr. Coffey, Q.C.

Agent: Mr. Redington.

THE petition contained the usual allegations of bribery, &c., and finally charged undue influence exercised by means of the Roman Catholic clergy, acting for and on behalf of the sitting members, who both by addresses from the altar during divine service and by other means, threatened loss and damage, and in other manners practised intimidation upon the electors who were members of the Roman Catholic persuasion, in order to induce them to vote or to refrain from voting at the election.

The principal evidence against Lord St. Lawrence consisted of a white paper book, headed "names of persons who by letters have made claims as agents, clerks, &c., against Lord St. Lawrence in reference to the Galway borough election, 1868." It appeared that the book was not prepared till after the election; it contained 133 names, and there were remarks on most of these names in parallel columns shewing their "qualifications," "by whom recom-

mended," &c. It was contended that all the claims contained in this book were more or less colourable, but this was not proved.

Against the other Respondent evidence was given to show that at the previous election a great deal of bribery had taken place in his behalf, but that the bribes had not actually been paid till long after the election, and that they in fact related as much to the present election as the last. This was not, however, established.

The evidence which affected the two Respondents jointly was that as to spiritual intimidation practised by the priests. It was proved that a considerable amount of influence had been exercised by the priests in favour of the two Respondents, and that in several instances the mass had been suspended and the congregations had been addressed and exhorted to support them, but it was not established that this influence had been more than might legitimately and properly have been exercised.

In the course of the case,

Not necessary to close case as to bribery before going into case as to intimidation. (1) 271.

Evidence as to the charges of bribery was first gone into, and upon a witness being called, who, it appeared from the particulars, was to speak to the charge of intimidation,

Mr. *McDonough*, for the Respondents, reminded the Court of the practice of the House of Commons Committees that the case of bribery should be closed before that of intimidation was opened.

Mr. Justice KEOGH thought that it was not necessary to enforce that rule now; he should leave the matter to the discretion of counsel.

Evidence of intention to pay bribes after hearing of petition concluded, inadmissible, because in that case fresh petition might be presented. Parliamentary Elections Act, 1868, s. 6 (2).

It having been proved that considerable bribery had taken place at the previous election, (viz., in 1865,) but that the bribes had to a great extent been not actually paid until after the hearing of the petition which had been presented as to that election,

Dr. *Seeds*, for the Petitioner, submitted in the course of his reply that there was evidence that bribes had been promised, and that it was intended to pay them in a similar way as soon as the hearing of this present petition was concluded.

Mr. Justice KEOGH said, in his judgment, as to this:—

"I will at once meet the remark that has been addressed to me, that it is within the bounds of possibility that notwithstanding this

investigation further sums of money will be claimed and paid. Since the election of 1865 an Act of Parliament* has been passed, under which if either of the sitting members or any of their agents pay in respect of the election one shilling at any time between this present hour and the last hour of the session of this present Parliament, for 28 days after every such payment a new petition can be presented to the Court of Common Pleas in Dublin, and if such a payment be proved, the seat of the sitting member is just as effectually gone as it would be upon this inquiry."

Mr. Justice KEOGH, in his judgment, declared the Respondents duly elected.

As to undue influence, after citing the 5th section of the Corrupt Practices Act, 1854, and also citing what he had said on the subject of general intimidation in his judgment in the Dublin case,† he said:—

What political influence exercised by priests is legitimate.

"I see no reason to qualify in any way a single word which I stated in that judgment. That I believe to be the law as laid down by the greatest authorities, and of that I believe no happier exposition was ever given than in the celebrated argument of Sir Samuel Romilly in the case of *Huguenin* v. *Baseley*.‡ In that case it was sought to set aside a voluntary settlement made by a widow upon a clergyman and his family, on the ground that it had been obtained by undue influence and abused confidence by the clergyman as an agent undertaking the management of this lady's affairs. Sir Samuel Romilly speaks in his argument of this undue influence, and I adopt his words as marking what I conceive to be the limit between due and undue influence. They were as follows:— 'Undue influence will be used if ecclesiastics make use of their power to excite superstitious fears or pious hopes, to inspire; as the objects may be best promoted, despair or confidence' (that is, to inspire despair or confidence in order to attain their own objects, be they what they may), 'to alarm the conscience by the horrors of eternal misery, or support the drooping spirits by unfolding the prospect of eternal happiness.' Now, what is the necessary consequence, if that is a true version of influence? Is it that the in-

* Parliamentary Elections Act, 1868, s. 6 (2).

† Vide ante, p. 273. ‡ 14 Ves. 288.

fluence of the clergy is to be excluded. I say not. The Bishop of Galway, in answer to the question put to him in cross-examination, 'Did you say that if the people were estranged from their clergy, and were not obedient to their clergy, they would escape from all legitimate authority?' said 'Yes.' I say so too.

"It has in the argument been said rather hastily, and I am sure without meaning to argue such a proposition, that if the priests use influence at all, the election will be void. The Roman Catholic bishop is in the eyes of the law of this country a commoner, and as such the legislature has given him a vote, and he has a right to exercise that privilege. The Protestant Episcopalian minister has the same right, and so has the Presbyterian minister. The landlord has his vote, and his tenants have their votes, and is it to be said that the landlord is to use no influence with his tenants? I deny the proposition altogether. I say that it is right and becoming that a landlord should use his influence with his tenants, and so long as he does not exercise that influence in an illegitimate manner, no steadier or safer or more legitimate influence can be used. Then, I ask, are the only persons in the community who are not to be at liberty to exercise their legitimate influence the bishops and clergy of the Roman Catholic church? I meet with a positive negative any such assumption; but, as I said before, that influence must be legitimately exercised. In support of what I have just said, I quote the *Mayo Case*,* 1853, where the committee, which was composed entirely of Protestants, came to this resolution:—'That it appears from the evidence that there was great abuse of spiritual influence on the part of a great body of the Catholic priesthood during the last election;' yet they declared the sitting members duly elected. I do not mention this case as expressing my concurrence in that decision. If I had come to the resolution they came to, I should also have arrived at the conclusion that the members were not duly elected. I now come to a case of an opposite kind. In the *Mayo Case*,† 1857, Colonel Higgins was the unsuccessful candidate, and it was proved that the Catholic priest told the people from the altar that 'the curse of God would come down upon any one who voted for Colonel

* 2 Power, Rodwell & Dew, 20. † 1 Wolferstan & Dew p. 1.

Higgins,' and that 'if they were dying he would not give the rites of the Church to any one voting for Higgins,' and much more evidence of a similar kind was given. Upon that evidence the committee came to the conclusion that the sitting member by his agents was guilty of undue influence and spiritual intimidation, and that the election was void. In the present case every description of charge has been made against the Catholic clergy; among other things, they are charged with having refused the rites of the church, in order to influence votes at the election. If that had been proved in a single case I would have avoided the election; I would not have hesitated a moment about it. But that has not been proved. It has, however, been proved that in various churches the celebration of the mass was suspended after the first Gospel in order to lecture the people upon the conflicting claims of the different candidates. I think it would be well that the House of God should not be made a place for delivering political discourses in at all; but I pass that by as a matter of trifling importance. I recognise the full right of the Catholic clergy to address their congregations, to tell them that one man is for the country, that another man is against the country; nay more, I would not hold a very hard and fast line as to language which in excited times may be used by Catholic ecclesiastics or by civilians. They may be impatient and zealous and wrathful, provided they do not surpass the bounds of what is known to be legitimate influence."

As to costs, he said:—

"I have carefully considered the question, and I think that various circumstances in the case amply justified a petition against both the Respondents. I therefore direct that all parties should pay their own costs." Costs.

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